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federal register

Tuesday
September 17, 1996

Briefings on How To Use the Federal Register
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 24, 1996 at 9:00 am.

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Presidential Documents

Title 3—

The President

Proclamation 6916 of September 13, 1996

National Farm Safety and Health Week, 1996

By the President of the United States of America

A Proclamation

Farming is an occupation, both personally rewarding and vitally important, keeping grocery store shelves stocked with affordable and healthful food products for consumers. American farmers, ranchers, and their families are dedicated to producing crops and livestock that not only feed the American people, but also have become increasingly important to the global economy. The 2.1 million farms in the United States are predominately operated by farm and ranch families, who work long, grueling hours, exposed to hazards ranging from complicated machinery, to farm chemicals, unpredictable livestock, and variable weather. They also face danger from potentially toxic dusts and gases found in and around farm silos, manure storage facilities, and livestock confinement buildings. Workers must be constantly on guard as they face these hazardous by-products of agricultural work.

Education and training programs, including ''hands-on'' intensive activities, have created an awareness among farmers and ranchers that personal safety equipment is a good investment for preventing injuries and illnesses related to their work.

Linked to these safety initiatives are programs that bring about a higher level of personal health awareness. This helps to reduce the levels of noise-induced hearing loss, sun exposure-related skin cancer, and the occupational respiratory ailments prevalent among agricultural workers in the United States.

On America's farms, young people are routinely exposed to some of the same risks as adults. Their level of maturity, training, and experience should be considered when assigning chores on the farm. Since many children live on farms, safe play areas should be designated to minimize their exposure to danger.

In setting aside this special week each year to focus on the safety and health of farmers, ranchers, and their families, we demonstrate to our Nation's citizens the importance of a strong agricultural industry as we approach the 21st century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 15 through September 21, 1996, as National Farm Safety and Health Week. I call upon government agencies, businesses, and professional associations that serve our agricultural sector to strengthen efforts to promote safety and health measures among our Nation's farm and ranch workers. I also call upon our Nation to recognize Wednesday, September 18, 1996, as a day set aside during the week to pay special attention to the risks and hazards facing young people on farms and ranches. I would ask agricultural workers to take advantage of educational programs and technical advances that can help them avoid injury and illness. Finally, I call upon the citizens of our Nation to reflect upon the bounty we enjoy thanks to the labor of agricultural workers across our land. Join me in renewing our commitment to making their health and safety a national priority.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–23950
Filed 9–16–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH59

Prevailing Rate Systems; Abolishment of San Joaquin, California, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to abolish the San Joaquin, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its sole county (San Joaquin County) as an area of application to the Sacramento, CA, NAF wage area for pay-setting purposes.

DATES: This interim rule becomes effective on September 17, 1996. Comments must be received by October 17, 1996. Employees currently paid rates from the San Joaquin, CA, NAF wage schedule will continue to be paid from that scheduled until their conversion to the Sacramento, CA, NAF wage schedule on April 18, 1997, 1 day before the effective date of the next Sacramento, CA, wage schedule.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to OPM that the San Joaquin, CA, FWS NAF wage area be abolished and that the sole remaining county (San Joaquin County) be added as an area of application to the Sacramento, CA, NAF wage area. This change is necessary because the Stockton Naval Communication Station, host installation for the wage area, will close on September 30, 1996. The remaining installation in the area, the Defense Distribution Region West, has approximately 18 FWS employees and no longer meets the minimum FWS employment criterion (26 employees) required to be a survey area.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

Proximity, similarities in overall population and total private sector employment, and the kinds and sizes of private industrial establishments all favor redefining San Joaquin County to the Sacramento, CA, NAF wage area. Of the regulatory criteria, only commuting patterns favor the Almeda-Contra Costa, CA, NAF wage area. Overall, the criteria support the redefinition of San Joaquin County to the Sacramento, CA, wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that advance preparations otherwise required for the 1997 San Joaquin, CA, NAF wage area survey may be canceled.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

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

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—[Amended]

2. Appendix B to subpart B is amended by removing the entry for San Joaquin in the listing for the State of California.

3. Appendix D to supart B is amended by removing the wage area listing for San Joaquin, California, and by revising the listing for Sacramento, California, to read as follows: Appendix D to Supart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

CALIFORNIA

* * * * *

SACRAMENTO

Survey area

California:
Sacramento

Area of Application. Survey area plus:

California:
San Joaquin (Effective date April 19, 1997)
Yuba
Oregon:
Jackson
Klamath

* * * * *

[FR Doc. 96–23780 Filed 9–16–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–51; Amendment 39–9721; AD 96–17–11]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, that requires replacement of 3rd, 4th, and 5th stage low pressure turbine (LPT) vane retention bolts and nuts, the removal of the 5th stage vane configuration which includes an electro-discharge machined (EDM) slot and replacement with a cast slot configuration, and prohibits the use of uncured anti-gallant compound on vane retention hardware. This amendment is prompted by reports of LPT failures that resulted in uncontained engine failures. The actions specified by this AD are intended to prevent LPT vane failures, which can result in uncontained engine failure, fire, and possible damage to the aircraft.

DATES: Effective November 18, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30,400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines was published in the Federal Register on October 16, 1995 (60 FR 53556). That action proposed to require replacement of 3rd, 4th, and 5th stage low pressure turbine (LPT) vane retention bolts and nuts and the removal of the 5th stage vane configuration which includes an electro-discharge machined (EDM) slot, and replacement with a 5th stage vane featuring a cast slot configuration. In addition, the proposed AD would prohibit use of uncured anti-gallant compound on the bolts or nuts, as uncured anti-gallant compound was a contributor to the unsafe condition. The actions would be required to be accomplished in accordance with PW Service Bulletin (SB) No. JT9D–7R4–72–473, Revision 2, dated February 8, 1993; PW Alert Service Bulletin (ASB) No. JT9D–7R4–72–480, dated April 20, 1993; PW ASB No. JT9D–7R4–72–481, dated April 20, 1993; and PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993.

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

Two commenters basically concur with the intent of the AD, but recommend a change in the accomplishment time, from the next shop visit to the next LPT module disassembly. The commenters believe accomplishment at the next shop visit causes an undue scheduling burden and increases cost by an estimated $558,900. The FAA does not concur. The FAA has reviewed the risk analysis, which predicts that if the accomplishment time is extended, the risk would quadruple, which the FAA considers unacceptable.

Two commenters recommend a change to the acceptable configurations. They state that paragraph (b)(2) of the compliance section should be revised to reference PW SB No. JT9D–7R4–72–488, Revision 1, dated November 20, 1993, as an additional approved and acceptable configuration, as the configuration defined by that SB became available after the criteria for the NPRM was established. The FAA concurs in part. Pratt & Whitney SB No. JT9D–7R4–72–488, Revision 1, dated November 20, 1993, which describes modifying the vane retention stops, is not an alternative to PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993, but can be added as a compliance option for an additional acceptable configuration. The FAA has therefore revised this final rule to include the following configurations as acceptable: (1) PW ASB No. JT9D–7R4–72–481, dated April 20, 1993; (2) PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993; or (3) PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993, and PW SB No. JT9D–7R4–72–488, Revision 1, dated November 20, 1993.

One commenter states that the reference to not using uncured anti-gallant compound on the bolt threads in the compliance section should be deleted, and that the issue should only be addressed in the discussion section. The commenter believes that the prohibition against using anti-gallant compound in the compliance section is not appropriate as a maintenance action within an AD, and would result in no terminating action being available to the airlines. The FAA does not concur. The primary cause of the LPT vane retention hardware failures was the use of uncured anti-gallant compound. Therefore, the FAA has determined that the prohibition against using uncured anti-gallant compound is a key element of the AD, and must be an integral part of the compliance section.

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

The FAA estimates that 600 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 22 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $792,000.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [AMENDED]

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

96–17–11 Pratt & Whitney: Amendment 39–9721. Docket 94–ANE–51.

Applicability: Pratt & Whitney (PW) JT9D–7R4 series turbofan engines, installed on but not limited to Airbus A300 and A310 series, and Boeing 747 and 767 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent low pressure turbine (LPT) vane failures, which can result in uncontained engine failure, fire, and possible damage to the aircraft, accomplish the following, accomplish the following:

(a) Remove 5th stage LPT vane cluster segments that incorporate electro-discharge machined (EDM) slots, Part Numbers (P/N) 787885 or 787885–001, and replace with the cast pocket vane configuration, P/N 796985, 795175, 796985–001, 808875, 811985, or 811985–001, at the next shop visit, but not later than 5,000 cycles in service (CIS) after the effective date of this AD, in accordance with PW Alert Service Bulletin (ASB) No. JT9D–7R4–72–480, dated April 20, 1993.

Note: Pratt & Whitney SB No. JT9D–7R4–72–473, Revision 2, dated February 8, 1993, may be used to segregate EDM slot from cast pocket 5th stage LPT vane clusters sharing the same P/N 787885 and 787885–001.

(b) For LPT modules that previously have had the 3rd, 4th, or 5th stage vane retention hardware disassembled for any reason perform paragraph (b)(1), (b)(2), or (b)(3) of this AD at the next shop visit, but not later than 5,000 CIS after the effective date of this AD, accomplish one of the following. Do not use uncured anti-gallant compound on the bolts or nuts:

(1) Install new 3rd, 4th, and 5th stage LPT vane bolts and nuts, in accordance with PW ASB No. JT9D–7R4–72–481, dated April 20, 1993; or

(2) Install new 3rd, 4th, and 5th stage LPT vane bolts and nuts, and install heat shield assemblies and air sealing ring stop assemblies in accordance with PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993; or

(3) Install new 3rd, 4th, and 5th stage LPT vane bolts and nuts, and install heat shield assemblies and air sealing ring stop assemblies in accordance with PW SB No. JT9D–7R4–72–484, Revision 1, dated October 9, 1993, and PW SB No. JT9D–7R4–72–488, Revision 1, dated November 20, 1993.

(c) For LPT modules that have never had the 3rd, 4th, or 5th stage vane retention hardware disassembled, perform paragraph (b)(1), (b)(2), or (b)(3) of this AD at the first LPT module disassembly. Do not use uncured anti-gallant compound on the bolts or nuts.

(d) For the purpose of this AD, a shop visit is defined as the induction of an engine into a maintenance facility for the purpose of either:

(1) Separation of pairs of major mating engine flanges; or

(2) The removal of an engine disk, hub, or spool.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

(g) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
SB No. JT9D–7R4 –72–473	1	2	February 8, 1993.
	2–5	Original	November 11, 1992.
	6, 7	2	February 8, 1993.
	8	Original	November 11, 1992.
	9	1	December 16, 1992.
	10, 11	2	February 8, 1993.
Total Pages: 11.			
ASB No. JT9D–7R4–72–480	1–13	Original	April 20, 1993.
Total Pages: 13.			
ASB No. JT9D–7R4–72–481	1–11	Original	April 20, 1993.
Total Pages: 11.			
SB No. JT9D–7R4–72–484	1	1	October 9, 1993.
	2–8	Original	August 2, 1993.
	9	1	October 9, 1993.
	10–16	Original	August 2, 1993.
	17	1	October 9, 1993.
	18–44	Original	August 2, 1993.
Total Pages: 44.			
SB No. JT9D–7R4–72–488	1	1	November 20, 1993
	2	Original	October 7, 1993.
	3	1	November 20, 1993.
	4–17	Original	October 7, 1993.

Document No.	Pages	Revision	Date
Total Pages: 18.	18	1	November 20, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30,400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 18, 1996.

Issued in Burlington, Massachusetts, on August 15, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–22771 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–216–AD; Amendment 39–9757; AD 96–19–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This action requires a one-time inspection to detect discrepancies of the main battery shunt, and replacement with a serviceable part, if necessary. This action also requires inspection of certain wires, washers, and brass jam nuts to detect any discrepancy, and replacement with a serviceable part, if necessary. Additionally, this action requires inspection, and adjustment if necessary, of the torque and resistance of the installation of the main battery ground stud. This amendment is prompted by reports of interruptions of electrical power during flight due to improper installation of the main battery shunt and ground stud connection of the main battery. The actions specified in this AD are intended to prevent such electrical power interruptions, which could result in loss of battery power to the source of standby power for the airplane.

DATES: Effective October 2, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 18, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–216–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2864; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA recently received a report indicating that interruptions of electrical power occurred during flight on a Boeing Model 767 series airplane. These power interruptions resulted in the loss of battery power to the hot battery bus (HBB). The HBB is the source of standby power to the airplane. Investigation revealed that the reported loss of power to the HBB occurred due to cracked shunts, improper installation of fasteners on the shunt studs, and improper torque of shunt fasteners. It appears that the improper installation of fasteners on the shunt studs and improper torque of shunt fasteners occurred during manufacture.

Loose fasteners on the shunt studs can create an open circuit or high resistance in the connection of the main battery ground stud, which can cause an interruption of the battery charger and the loss of the HBB. The loss of the HBB and associated loads will cause multiple advisory level messages on the Engine Indication and Crew Alerting System (EICAS); loss of power to the standby buses/loads during standby operation; and the potential loss of center bus power. Such loss of standby power could adversely affect the function of the following systems:

1. the captain's standby instruments,
2. flight control electronics,
3. Very High Frequency (VHF) communications,
4. thrust reverser control,
5. standby ignition,
6. passenger oxygen,
7. fire detection and extinguishing, and
8. wing and engine anti-ice systems, among others.

Improper installation of the main battery shunt and ground stud connection of the main battery, if not corrected, could cause an interruption of electrical power and loss of battery power to the HBB during flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–24A0112, Revision 1, dated August 8, 1996, which describes procedures for inspection of the main battery shunt to detect contaminated fasteners, missing pressure washers or washers having an incorrect part number, or damage to the terminal posts or to the plastic base, and replacement of the main battery shunt, if necessary. The alert service bulletin also describes inspection of certain wire, washers, and brass jam nuts to detect any discrepancy, and replacement of any discrepant part with a serviceable part. Additionally, the alert service bulletin describes procedures for an inspection of the main battery ground stud to verify the torque and resistance, and adjustment of the torque and resistance, if necessary.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 767 series airplanes of the same type design, this AD is being issued to prevent interruption of the electrical power during flight, which could result in loss of battery power to the source of standby power for the airplane. This AD requires inspection of the main battery shunt to detect contaminated fasteners, missing pressure washers or washers having an incorrect part number, or

damage to the terminal posts or to the plastic base, and replacement of the main battery shunt, if necessary. This AD also requires inspection of certain wire, washers, and brass jam nuts to detect any discrepancy, and replacement of any discrepant part with a serviceable part. Additionally, this AD requires an inspection of the main battery ground stud to verify the torque and resistance, and adjustment of the torque and resistance, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–216–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–19–10 Boeing: Amendment 39–9757. Docket 96–NM–216–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0112, Revision 1, dated August 8, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent interruptions of electrical power during flight, which could result in loss of battery power to the source of standby power for the airplane, accomplish the following:

(a) Within 45 days after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2) and (a)(3) of this AD, in accordance with Boeing Alert Service Bulletin 767–24A0112, Revision 1, August 8, 1996.

(1) Perform an inspection of the main battery shunt, to detect any contaminated fasteners, missing pressure washers or washers having an incorrect part number, or damage to terminal posts or to the plastic base. If any discrepancy is found, prior to further flight, replace the main battery shunt, in accordance with the alert service bulletin.

(2) Perform an inspection of the wires, washers, and brass jam nuts to detect any contamination or damage. If any discrepancy is found, prior to further flight, replace the discrepant part with a serviceable part, in accordance with the alert service bulletin.

(3) Inspect the torque and electrical resistance of the installation of the main battery ground stud, and adjust the torque and electrical resistance of the ground stud, in accordance with the alert service bulletin.

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

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

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

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–24A0112, Revision 1, dated August 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–

2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 2, 1996.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23447 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–36–AD; Amendment 39–9726; AD 96–18–02]

RIN 2120–AA64

Airworthiness Directives; American Champion Aircraft Corporation Models 8KCAB, 8GCBC, 7GCBC, 7ECA, 7GCAA, and 7KCAB Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–18–02, which was published in the Federal Register on August 28, 1996 (61 FR 44157), and concerns American Champion Aircraft Corporation Models 8KCAB, 8GCBC, 7GCBC, 7ECA, 7GCAA, and 7KCAB airplanes. Reference to the Model 7GCAA airplanes in the Applicability section of that AD is incorrect (referred to as Model 7GCCA airplanes). All other reference is correct. The AD currently requires installing removable inspection hole covers for the wing front strut attach fittings, and replacing the wing front strut attach fittings with fittings of improved design. This action corrects the AD to reflect the correct airplane model designation in the Applicability section.

EFFECTIVE DATE: September 20, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Forest, Aerospace Engineer, Federal Aviation Administration (FAA), Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7697; facsimile (847) 294–7834.

SUPPLEMENTARY INFORMATION: On August 20, 1996, the FAA issued AD 96–18–02, Amendment 39–9726 (61 FR 44157, August 28, 1996), which applies to American Champion Aircraft Corporation Models 8KCAB, 8GCBC, 7GCBC, 7ECA, 7GCAA, and 7KCAB airplanes. This AD requires installing removable inspection hole covers for the wing front strut attach fittings, and replacing the wing front strut attach fittings with fittings of improved design.

Need for the Correction

Reference to the Model 7GCAA airplanes in the Applicability section of AD 96–18–02 is incorrect (referred to as Model 7GCCA airplanes). All other reference is correct. As written, operators of the American Champion Aircraft Corporation Model 7GCAA airplanes would not know that AD 96–18–02 applied to their airplanes if the Applicability section was the only part of the AD they referenced.

Correction of Publication

Accordingly, the publication of August 28, 1996 (61 FR 44157), of Amendment 39–9726; AD 96–18–02, which was the subject of FR Doc. 96–21746, is corrected as follows:

§ 39.13 [Corrected]

On page 44159, in the second column, § 39.13, the Applicability section of the AD, the 34th line from the top of the column, correct ''7GCCA'' to ''7GCAA''.

Action is taken herein to correct this reference in AD 96–18–02 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains September 20, 1996.

Issued in Kansas City, Missouri on September 10, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23706 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–63–AD; Amendment 39–9759; AD 96–19–13]

RIN 2120–AA64

Airworthiness Directives; Gates Learjet Model 35 and 36 Series Airplanes Modified by Raisbeck Supplemental Type Certificate (STC) SA766NW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Gates Learjet Model 35 and 36 series airplanes that have been modified in accordance with Raisbeck Supplemental Type Certificate (STC) SA766NW, that requires a reduction of the maximum operating limit speed on the affected airplanes to prevent encountering certain potentially hazardous conditions. This amendment is prompted by reports of incidents of aileron buffet or buzz experienced during high speed cruise. The actions specified by this AD are intended to prevent aileron buffet or buzz conditions, which can result in the deterioration of the aircraft lateral control system characteristics to an unacceptable level.

EFFECTIVE DATE: October 22, 1996.

ADDRESSES: Information concerning the subject of this rule may be obtained from Jet Air Corporation, P.O. Box 245, Bellevue, Washington 98009. Information concerning this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2772; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Gates Learjet Model 35 and 36 series airplanes that have been modified in accordance with Raisbeck Supplemental Type Certificate (STC) SA766NW was published in the Federal Register on May 13, 1996 (61 FR 21982). That action proposed to require a reduction of the maximum operating limit speed on the affected airplanes to prevent encountering certain potentially hazardous conditions.

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

Request to Require New Part Numbers of Modified Parts

One commenter requests that the proposal be revised to require that, once the overspeed warning switch is recalibrated and the airspeed indicators are modified [in accordance with OPTION I of the proposed AD], new part numbers should be assigned to those items. Additionally, the commenter requests that a parts catalog supplement be issued with the STC, calling out the correct new part number of the devices for future reference by maintenance personnel. The commenter considers that merely ink-stamping

these parts once the required actions have been accomplished on them, as the proposed rule specifies, is not generally acceptable practice. The commenter states that, if either of those items is replaced in the future, there is no mechanism in place that would prevent the installation of a standard (unmodified) part number device in the airplane. Therefore, the airplane would no longer be in compliance with the AD, and would not be airworthy.

. The FAA does not concur with the commenters request for two reasons:

1. First, assigning and changing part numbers, and developing a parts catalog supplement, would be more labor-intensive and time consuming than ink-stamping a recalibrated or modified part. Additionally, the FAA is not convinced that the actions suggested by the commenter would be any more effective than the requirements of this AD.

2. Second, to show that actions specified in this AD have been complied with, it is necessary for the operator to make a maintenance log book entry indicating that the modified and ink-stamped warning switch and airspeed indicators are installed. If these items are replaced in the future (with parts that are not modified and not ink-stamped), a review of the log book entry would readily inform the mechanic or inspector that the airplane is not in compliance with the AD. Further, this process for verifying compliance would be identical whether the part is ink-stamped or has a new part number.

Conclusion

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

Petitioning for an Exemption of the Requirements of the Final Rule

Affected operators should note that the aileron instability that is the subject of this AD is a condition affected by the contour of the wing leading edge, which is a function of manufacturing tolerances. In light of this, the FAA recognizes that not all airplanes modified in accordance with Raisbeck STC SA766NW may exhibit the problem of aileron buffet or buzz below .83 Mach. Operators of those airplanes may wish to petition the FAA for an exemption from the requirements of the rule, under the provisions of part 11 of the Federal Aviation Regulations (14 CFR 11), ''General Rulemaking Procedures.''

Petitioners for such an exemption must provide data that would justify a grant of exemption, including, but not limited to, information concerning:

—the number of flights the airplane has flown in conditions involving high weight, high altitude, and high speed; and

—if any incident of buffet or buzz was observed during flight in those conditions.

Based on the data submitted with the petition, the FAA will determine on a case- by-case basis if a flight evaluation or other additional data are necessary to determine if granting the petition would not adversely affect safety, and would be in the public interest.

Cost Impact

There are approximately 29 Gates Learjet Model 35 and 36 series airplanes of the affected design in the worldwide fleet. The FAA estimates that at least 1 airplane of U.S. registry will be affected by this proposed AD.

To accomplish the removal and recalibration of the airspeed indicators and Mach overspeed warning switch, and to revise the AFM Supplement, as provided by ''Option I'' of the proposed rule, it will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. The FAA estimates that it will cost approximately $1,000 per airplane to reset the airspeed indicators and Mach overspeed warning switch. Based on these figures, the cost impact of this action (Option 1 of the AD) on U.S. operators is estimated to be $1,300 per airplane.

To accomplish the removal of the STC modifications, as provided by ''Option II'' of the rule, it will take approximately 100 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action (Option II of the AD) on U.S. operators is estimated to be $6,000 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–19–13 Gates Learjet: Amendment 39–9759. Docket 96–NM–63–AD.

Applicability: Model 35, 35A, 36, and 36A series airplanes; certificated in any category; that have been modified in accordance with Raisbeck Group Supplemental Type Certificate (STC) SA766NW, and that do not have one of the airplane serial numbers listed in Table 1 of this AD.

Table 1.—Serial Numbers* NOT affected by this AD

35–023	35A–092	35A–192	36–004
35–034	35A–093	35A–203	36–017
35–042	35A–095	35A–206	36–028
35–044	35A–118	35A–207	36A–029
35–047	35A–127	35A–209	36A–031
35A–068	35A–132	35A–228	36A–038
35A–073	35A–135	35A–231	36A–043
35A–075	35A–145	35A–244	36A–044
35A–076	35A–172	35A–245	
35A–086	35A–185	36–003	

*Airplanes having the serial numbers listed in Table 1 are subject to similar requirements mandated by AD 85–16–04, amendment 39–5110.

Note 1: This AD applies to each airplane as indicated in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required as indicated, unless accomplished previously.

To prevent deterioration of the airplane's lateral control characteristics as a result of aileron buffet or buzz, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either paragraph (a)(1) (''OPTION I'') or (a)(2) (''OPTION II'') of this AD:

(1) OPTION I. Permanently reduce the airplane's maximum operating Mach limit (M_{MO}) by accomplishing the actions specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD:

(i) Submit the FAA-approved STC SA766NW Airplane Flight Manual Supplement to the Manager, Flight Test Branch, ANM–160S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; to change the limit Mach number from .83 to .80. And

(ii) Remove the Mach overspeed warning switch and have it reset from Mach .83 to Mach .80. Contact the manufacturer, PRECISION SENSOR, P.O. Box 509, Milford, Connecticut 06460; telephone number (203) 877–2795; to have the instrument recalibrated. Reidentify the recalibrated Mach overspeed warning switch by ink-stamping the words ''Mach limit .80'' adjacent to the part number. Reinstall the Mach overspeed warning switch after it has been so recalibrated. And

(iii) Remove the pilot's and copilot's airspeed indicators and have them modified by changing the ''barber pole'' from Mach number .83 to Mach number .80. The instrument must be recalibrated by the instrument manufacturer or a certified repair station. Reidentify the modified airspeed indicators by ink stamping ''Mach limit .80'' adjacent to the part number. Reinstall the pilot's and copilot's airspeed indicators after they have been so modified.

(2) OPTION II. Remove the modifications installed in accordance with Raisbeck Group STC SA766NW, and return the aircraft either to the original type design configuration, or to the Gates Learjet ''Softflight'' configuration.

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

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

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

(d) This amendment becomes effective on October 22, 1996.

Issued in Renton, Washington, on September 10, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23710 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Docket No. 96–ACE–13]

Amendment to Class D Airspace, Knob Noster, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class D airspace area at Whiteman AFB, Knob Noster, MO. A review of military instrument approach procedures found that there is not sufficient Class D airspace and requires an increase of 0.5 mile extension to the north in order to protect the point at which arrivals leave 1,000 feet AGL. The effect of this rule is to provide additional controlled airspace for aircraft executing the SIAPs at Whiteman AFB.

DATES: Effective date. January 30, 1997.

Comment date. Comments must be received on or before October 25, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–13, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has reviewed the controlled airspace at Whiteman AFB, Knob Noster, MO. The exiting Class D airspace does not protect the point at which arrivals leave 1,000 feet AGL. Therefore, we have added a 0.5 mile extension on the north. The amendment to Class D airspace at Knob Noster, MO, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 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 Class D airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of

proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''ADDRESSES.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–13.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

ACE MO D Knob Noster, MO [Revised]

Whiteman AFB, MO
(Lat. 38°43′49″ N., long., 93°32′53″ W.)
Whiteman TACAN
(Lat. 38°44′09″ N., long. 93°33′02″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL and within a 4.6-mile radius of Whiteman AFB and within 1.8 miles each side of the Whiteman TACAN 185° radial extending from the 4.6 radius to 6.1 miles south of the TACAN and within 1 mile each side of the Whiteman TACAN 008° radial extending from the 4.6 radius to 5.1 miles north of the TACAN. This Class D airspace area is effective during the specified dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Mo, on August 16, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–23809 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–11]

Establishment of Class E Airspace; Miller, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Miller Municipal Airport, Miller, SD, to accommodate a Nondirectional Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, July 3, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate an NDB at Miller Municipal Airport, Miller, SD (61 FR 34769). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operations and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) establishes Class E airspace at Miller Municipal Airport, Miller, SD, to accommodate an NDB. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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 regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 Designation 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.

* * * * *

AGL SD/E5 Miller, SD [New]

Miller Municipal Airport, SD
(Lat. 44°31′31″ N, long. 98°57′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Miller Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the west and northwest by V–263, on the south by V–120, and on the east by V–15 excluding the Aberdeen, SD; the Pierre, SD; the Mitchell, SD; and the Huron, SD, 1,200 foot Class E airspace areas and all federal airways.

* * * * *

Issued in Des Plaines, Illinois on September 4, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–23804 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28675; Amdt. No. 1751]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP

amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 6, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective October 10, 1996*

Alliance, NE, Alliance Muni, NDBRWY30, Amdt 7 CANCELLED
Kearney, NE, Kearney Muni, LOC RWY 36, Amdt 5A CANCELLED
Fort Worth, TX, Luck Field, VOR/DME or GPS–A, Amdt 1, CANCELLED
Cumberland, WI, Cumberland Muni, VOR/DME–A, Orig

** * * Effective November 7, 1996*

Arkadelphia, AR, Arkadelphia Muni, NDB OR GPS RWY 4, Amdt 6
West Milford, NJ, Greenwood Lake, VOR RWY 6, Orig
West Milford, NJ, Greenwood Lake, VOR OR GPS–A, Amdt 3, CANCELLED
Saratoga Springs, NY, Saratoga County, VOR–A, Amdt 5

** * * Effective December 5, 1996*

Gulf Shores, AL, Jack Edwards, GPS RWY 27, Orig
Anchorage, AK, Anchorage Intl, GPS RWY 14, Orig
Cordova, AK, Merle K/Mudhole/Smith, GPS RWY 27, Orig
Fairbanks, AK, Fairbanks Intl, GPS RWY 1L, Orig
Ketchikan, AK, Ketchikan Intl, GPS–B, Orig
Mekoryuk, AK, Mekoryuk, GPS RWY 23, Orig
Morrilton, AR, Petit Jean Park, NDB OR GPS RWY 2, Amdt 2, CANCELLED
Morrilton, AR, Petit Jean Park, GPS RWY 2, Orig
Palo Alto, CA, Palo Alto Arpt of Santa Clara County, VOR/DME RWY 30, Orig
Denver, CO, Jeffco, VOR/DME RWY 29L/R, Orig
Denver, CO, Jeffco, VOR/DME OR GPS RWY 29R, Orig CANCELLED
Denver, CO, Jeffco, ILS RWY 29R, Amdt 13
Denver, CO, Jeffco, GPS RWY 29L, Orig
Denver, CO, Jeffco, GPS RWY 29R, Orig
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, GPS RWY 33, Amdt 1
Kremmling, CO, McElroy Airfield, VOR/DME OR GPS–A, Amdt 2
Fort Pierce, FL, St. Lucie County Intl, NDB–A, Orig
Chicago/Romeoville, IL, Lewis University, GPS RWY 27, Amdt 1
Boyne Falls, Mi, Boyne Mountain, NDB or GPS–A, Amdt 6
Boyne Falls, Mi, Boyne Mountain, VOR/DME RNAV or GPS–B, Amdt 3
Gaylord, MI, Otsego County, VOR or GPS RWY 27, Orig
Gaylord, MI, Otsego County, VOR or GPS RWY 9, Amdt 8, CANCELLED
Gaylord, MI, Otsego County, VOR or GPS RWY 27, Amdt 8, CANCELLED
Gaylord, MI, Otsego County, NDB RWY 9, Amdt 11
St. Louis, MO, Lambert-St Louis Intl, ILS RWY 24, Amdt 44
Lincoln, NE Lincoln Muni, GPS RWY 14, Orig
Greensboro, NC, May, VOR/DME OR GPS–A, Amdt 2
Kinston, NC, Kinston Regional Jetport at Stallings Field, LOC BC Rwy 23, Orig, CANCELLED
North Wilkesboro, NC, Wilkes County, GPS RWY 1, Orig
Wilson, NC, Wilson Industrial Air Center, NDB or GPS Rwy 3, Amdt 6
Wilson, NC, Wilson Industrial Air Center, NDB or GPS Rwy 21, Amdt 1
Ardmore, OK, Ardmore Downtown Executive, GPS RWY 35, Orig
Claremore, OK, Claremore Muni, GPS RWY 35, Orig
Clinton, OK, Clinton Muni, NDB RWY 35, Amdt 6
Clinton, OK, Clinton Muni, GPS RWY 35, Orig
Pauls Valley, OK, Pauls Valley Muni, GPS RWY 35, Amdt 1
Anahuac, TX, Chambers County, GPS RWY 12, Orig
Brownfield, TX, Terry County, GPS RWY 2, Orig
Center, TX Center Muni, GPS RWY 17, Orig
Cleveland, TX, Cleveland Muni, GPS RWY 16, Orig
Llano, TX, Llano Muni, GPS RWY 17, Orig
Llano, TX, Llano Muni, GPS RWY 35, Orig
Pecos, TX, Pecos Muni, GPS RWY 14, Orig
Port Isabel, TX, Port Isabel-Cameron Co, GPS RWY 13, Orig
Ellensburg, WA, Bowers Field, GPS RWY 25, Orig
Ellensburg, WA, Bowers Field, VOR OR GPS–B, Amdt 1
Ellenburg, WA, Bowers Field, VOR OR GPS–A, Amdt 2
Vancouver, WA, Pearson Field, LDA–A, Orig
Vancouver, WA, Pearson Field, LOC BC–A, Orig, CANCELLED

[FR Doc. 96–23807 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28676; Amdt. No. 1752]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or

changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

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

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

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

For Examination—

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

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

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

For Purchase— Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–100), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 6, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
08/13/96	NH	Lebanon	Lebanon Muni	FDC 6/5998	NDB or GPS–B, AMDT 3...THIS REPLACES NOTAM 6/5252 LEB
08/19/96	MS	Jackson	Jackson Intl	FDC 6/6274	LOC BC RWY 15R AMDT 4...THIS CORRECTS TL96–19
08/22/96	MN	Moose Lake	Moose Lake-Carlton County	FDC 6/6428	NDB or GPS RWY 4, ORIG–A...
08/22/96	SD	Aberdeen	Aberdeen Regional	FDC 6/6416	ILS RWY 31, AMDT 12...
08/22/96	SD	Aberdeen	Aberdeen Regional	FDC 6/6417	LOC/DME BC RWY 13, AMDT 9...
08/22/96	SD	Aberdeen	Aberdeen Regional	FDC 6/6418	NDB RWY 31, AMDT 9...
08/22/96	SD	Aberdeen	Aberdeen Regional	FDC 6/6419	VOR/DME or GPS RWY 13, AMDT 11...
08/22/96	SD	Aberdeen	Aberdeen Regional	FDC 6/6420	VOR or GPS RWY 31 AMDT 19...
08/23/96	MN	Appleton	Appleton Muni	FDC 6/6454	NDB RWY 13 ORIG...
08/23/96	MN	Owatonna	Owatonna Muni	FDC 6/6458	VOR/DME RWY 30 AMDT 2A...
08/26/96	IA	Davenport	Davenport Muni	FDC 6/6486	VOR or GPS RWY 21, AMDT 7...
08/26/96	IA	Davenport	Davenport Muni	FDC 6/6488	ILS RWY 15, ORIG...
08/26/96	IA	Davenport	Davenport Muni	FDC 6/6490	VOR or GPS RWY 3, AMDT 8...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6469	NDB RWY 13, AMDT 15A...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6472	ILS RWY 13, AMDT 1A...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6474	ILS RWY 31, AMDT 24B...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6476	VOR/DME or TACAN or GPS RWY 13, AMDT 17A...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6478	VOR or TACAN or GPS RWY 31, AMDT 25A...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6479	NDB RWY 31, AMDT 23A...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6480	NDB RWY 35, ORIG...
08/26/96	IA	Sioux City	Sioux Gateway	FDC 6/6481	GPS RWY 17, ORIG...
08/26/96	OK	Oklahoma City	Will Rogers World	FDC 6/6468	ILS RWY 4R AMDT 9...
08/28/96	IL	Chicago	Chicago O'Hare Intl	FDC 6/6638	ILS RWY 4R AMDT 6...
08/28/96	MN	Faribault	Faribault Muni	FDC 6/6632	VOR or GPS–A AMDT 3A...
08/28/96	MN	Owatonna	Owatonna Muni	FDC 6/6636	VOR or GPS RWY 12 AMDT 8A...
08/28/96	MN	WaSECA	WaSECA Muni	FDC 6/6634	VOR or GPS–A AMDT 3A...
08/28/96	OH	Hillsboro	Highland County	FDC 6/6635	VOR/DME or GPS–A AMDT 1A...
09/03/96	FL	Jacksonville	Craig Muni	FDC 6/6770	ILS RWY 32, AMDT 3...
09/03/96	GA	Jefferson	Jackson County	FDC 6/6760	VOR/DME or GPS RWY 34 Orig...
09/03/96	MN	Waseca	Waseca Muni	FDC 6/6703	NDB or GPS RWY 15 AMT 3A...
09/03/96	MN	Waseca	Wasec Muni	FDC 6/6703	NDB or GPS RWY 15 AMT 3A...
09/03/96	OH	Wilmington	Clinton Field	FDC 6/6706	VOR or GPS–A ORIG...
09/03/96	OH	Wilmington	Clinton Field	FDC 6/6706	VOR or GPS–A ORIG

[FR Doc. 96–23808 Filed 9–16–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Atipamezole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for intramuscular use of atipamezole hydrochloride sterile injectable solution in dogs as a medetomidine reversing agent.

EFFECTIVE DATE: September 17, 1996.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, has filed NADA 141–033, which provides for intramuscular use of Antisedan® (atipamezole hydrochloride) sterile injectable solution in dogs as a reversing agent for Domitor® (medetomidine). Medetomidine is a sedative and analgesic agent approved for use in dogs. The NADA is approved as of August 6, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.147 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 6, 1996, because no active ingredient (including any ester or salt of the drug)

has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.147 is added to read as follows:

§ 522.147 Atipamezole hydrochloride.

(a) *Specifications*. Each milliliter of sterile injectable solution contains 5.0 milligrams of atipamezole hydrochloride.

(b) *Sponsor*. See No. 000069 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*. Inject intramuscularly the same volume as that of medetomidine used.

(2) *Indications for use*. To reverse clinical effects of the sedative and analgesic agent medetomidine hydrochloride.

(3) *Limitations*. For intramuscular use only. Not recommended for use in pregnant or lactating animals, or animals intended for breeding. Atipamezole has not been evaluated in breeding animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 4, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–23758 Filed 9–16–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR parts 1309, 1310 and 1313

[DEA No. 138F]

Removal of Exemption for Certain Pseudoephedrine Products Marketed Under the Food, Drug, and Cosmetic Act (FD&C Act); Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published on Wednesday, August 7, 1996 (61 FR 40981). The regulations related to the removal of the exemption for certain pseudoephedrine products marketed under the Food, Drug, and Cosmetic Act (FD&C Act).

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Acting Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of these corrections remove the exemption for certain pseudoephedrine products marketed under the Food, Drug, and Cosmetic Act (FD&C Act). The regulations amend Title 21, Code of Federal Regulations, to revise certain sections in Parts 1309, 1310 and 1313.

The final rule (61 FR 40981) added a new section designated as ''Section 1309.28''. This new section should have been designated as ''Section 1309.29''. Therefore, in each instance where the final rule refers to the wording ''Section 1309.28'', the reader should substitute the wording ''Section 1309.29''.

Accordingly, the publication on August 7, 1996 of the final regulation (61 FR 40981) is corrected as follows:

PART 1309—[CORRECTED]

§ 1309.02 [Corrected]

1. On page 40989 in the second column § 1309.02(f) is corrected by removing ''§ 1309.28'' and adding ''§ 1309.29'' in its place.

§ 1309.29 [Corrected]

2. On page 40989, in the third column, amendatory instruction 3 is corrected to read as follows:

''Section 1309.29 is added to read as follows:''

3. On page 40989, in the third column, the number and heading under amendatory instruction 3 are corrected to read as follows:

''§ 1309.29 Exemption of retail distributors of certain pseudoephedrine products.''

PART 1310—[CORRECTED]

§ 1310.04 [Corrected]

4. On page 40990, § 1310.04, is corrected by removing § 1309.28'' and adding ''§ 1309.29'' in its place.

Dated: September 9, 1996.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 96–23556 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF STATE

22 CFR Parts 120, 123, and 128

[Public Notice 2408]

Bureau of Political-Military Affairs; Amendments to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) to correct a typographical error in the definition of ''technical data;'' eliminate the requirement of reporting subsequent exports of unclassified technical data; and clarify authority and use the current names of any office, bureau, or titles of officers that have changed since 1990.

EFFECTIVE DATE: September 17, 1996.

FOR FURTHER INFORMATION CONTACT: Philips S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Controls, Bureau of Political-Military Affairs, Department of State (703 875–6650).

SUPPLEMENTARY INFORMATION: Federal Register Public Notice No. 1179, dated March 29, 1990, announced that the Office of Munitions Control had changed its name to the Office of Defense Trade Controls. (55 FR 11714.) Part 128 of the International Traffic in Arms Regulations (ITAR) is being amended to reflect the current name of the Office of Defense Trade Controls. Other amendments reflect the name change of the Bureau of Politico-Military Affairs to its current name, the Bureau of Political-Military Affairs.Additionally, references to the ''Under Secretary of State for Security Assistance, Science and Technology'' are being amended to the current title of the ''Under Secretary of State for Arms Control and International Security Affairs.'' Furthermore, cross references to other sections in the ITAR are being

amended for accuracy. The delivery address for the Office of Defense Trade Controls was added to part 128.

These amendments involve a foreign affairs function of the United States. They are exempt from review under Executive Order 12866 but have been reviewed internally by the Department to ensure consistency with the purposes thereof. They are also not subject to 5 U.S.C. 553 and 554., and do not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

List of Subjects

22 CFR Part 120

Arms and munitions, Exports, Technical assistance.

22 CFR Part 123

Arms and munitions, Exports, Technical assistance.

22 CFR Part 128

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, 22 CFR chapter I, subchapter M, is amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658.

2. Section 120.10(a)(1) is revised to read as follows:

§ 120.10 Technical data.

(a) * * *

(1) Information, other than software as defined in § 120.10(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. 79; 22 U.S.C. 2658.

2. Section 123.22(d) is revised to read as follows:

§ 123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs.

* * * * *

(d) A Shipper's Export Declaration is not required for exports of unclassified technical data. Exporters shall notify the Office of Defense Trade Controls of the initial export of the data by either returning the license after self endorsement or by sending a letter to the Office of Defense Trade Controls. The letter shall provide the method, date, license number and airway bill number (if applicable) of the shipment. The letter must be signed by an empowered official of the company and provided to the Office of Defense Trade Controls within thirty days of the initial export.

* * * * *

PART 128—ADMINISTRATIVE PROCEDURES

1. The authority citation for 22 part 128 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

2. Section 128.1 is revised to read as follows:

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. It also authorizes the Secretary of State to revoke, suspend or amend licenses or other written approvals whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

3. Section 128.2 is revised to read as follows:

§ 128.2 Administrative Law Judge

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State or of the Department of Commerce, as provided in 15 CFR 788.2. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

4. Section 128.3 is revised to read as follows:

§ 128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Director, Office of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at that person's last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government

of the country wherein the respondent resident permitting this action.

5. Section 128.4 is revised to read as follows:

§ 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Administrative Law Judge for consideration in a manner as the Administrative Law Judge may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted to duplicate to the Assistant Secretary for Political-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The Director will refer the petition to the Administrative Law Judge for consideration and a recommendation. The Administrative law Judge will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

6. In § 128.5 paragraphs (b) and (c) are revised to read as follows:

§ 128.5 Answer and demand for oral hearing.

* * * * *

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within seven (7) days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of Administrative Law Judge, United States Department of Commerce, Room H–6716. 14th Street and Constitution Avenue, NW., Washington, DC 20230. A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls, SA–6, Room 200, Department of State, Washington, DC 20522–0602, or delivered to the 21st street entrance of the Department of State, 2201 C Street, NW., Washington, DC addressed to Director, Office of Defense Trade Controls, SA–6, Room 200, Department of State, Washington, DC 20522–0602.

7. Section 128.6 is revised to read as follows:

§ 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Administrative Law Judge, may request from the Office of Defense Trade Controls any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may provide any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may supply summaries in place or original documents and may withhold information from discovery if the interests of national security or foreign policy so require, or if necessary to comply with any statute, executive order or regulation requiring that the information may not be disclosed. The respondent may request the Administrative Law Judge to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Defense Trade Controls.* The Office of Defense Trade Controls or the Administrative Law Judge may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Administrative Law Judge may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by he Administrative Law Judge to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Defense Trade Controls fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Administrative Law Judge may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Defense Trade Controls or the Administrative Law Judge, on her or his own motion or motion of the Office of Defense Trade Controls, and upon such notice to the respondent as the Administrative Law Judge may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Administrative Law Judge deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Administrative Law Judge shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Administrative Law Judge shall dismiss the charges.

8. Section 128.7 is revised to read as follows:

§ 128.7 Prehearing conference.

(a)(1) The Administrative Law Judge may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider:

(i) Simplification of issues;

(ii) The necessity of desirability of amendments to pleadings;

(iii) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(iv) Such other matter as may expedite the disposition of the proceeding.

(2) The Administrative Law Judge will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties.

(3) The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Administrative Law Judge.

(b) If a conference is impracticable , the Administrative Law Judge may request the parties to correspond with the person to achieve the purposes of a conference. The Administrative Law Judge shall prepare a summary of action taken as in the case of a conference.

9. Section 128.8 is revised to read as follows:

§ 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Administrative Law Judge as provided in § 128.4(a). If any answer is filed, but no oral hearing demanded, the Administrative Law Judge may proceed to consider the case upon the written pleadings and evidence available. The Administrative Law Judge may provide for the making of the record in such manner as the Administrative Law Judge deems appropriate. If respondent answers and demands an oral hearing, the Administrative Law Judge, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Administrative Law Judge may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Administrative Law Judge the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Administrative Law Judge. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

10. Section 128.9 is revised to read as follows:

§ 128.9 Proceedings before and report of Administrative Law Judge.

(a) The Administrative Law Judge may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Administrative Law Judge, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Administrative Law Judge's recommendations. It shall be transmitted to the Assistant Secretary for Political-Military Affairs, Department of State.

11. Section 128.10 is revised to read as follows:

§ 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter or take such action as the Administrative Law Judge deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

12. Section 128.11 is revised to read as follows:

§ 128.11 Consent agreements.

(a) The Office of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary for Political-Military Affairs. If the Assistant Secretary for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary for Political-Military Affairs approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Political-Military Affairs, and no action by the Administrative Law Judge shall be required. Cases which are settled may not be reopened or appealed.

13. Section 128.12 is revised to read as follows:

§ 128.12 Rehearings.

The Administrative Law Judge may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Administrative Law Judge will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (Described in § 128.10).

14. In § 128.13 paragraphs (a), (c), (e), and (f) are revised to read as follows:

§ 128.13 Appeals.

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Arms Control and International Security Affairs, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

* * * * *

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Administrative Law Judge, the report of the Administrative Law Judge, the order of the Assistant Secretary for Political-Military Affairs, and any other relevant documents involved in the proceedings before the Administrative Law Judge. The Under Secretary of State for Arms Control and International Security

Affairs may direct a rehearing and reopening before the Administrative Law Judge if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

* * * * *

(e) *Preparation of appeals.*—(1) *General requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Director, Office of Defense Trade Controls, SA–6, Room 200, Department of State, Washington, DC 20522–0620 or delivered to the 21st street entrance of the Department of State, 2201 C Street, NW., Washington, DC addressed to Director, Office of Defense Trade Controls, SA–6, Room 200, Department of State, Washington, DC 20522–0602.

(2) *Oral presentation.* The Under Secretary of State for Arms Control and International Security Affairs may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security Affairs will be final.

15. Section 128.14 is revised to read as follows:

§ 128.14 Confidentiality of proceedings.

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

16. Section 128.15 is revised to read as follows:

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Defense Trade Controls, may apply without notice to any person to be affected thereby, to the Administrative Law Judge for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearings*—(1) *Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge's report will be furnished to any person affected thereby.

(5) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

17. Section 128.16 is revised to read as follows:

§ 128.16 Extension of time.

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part.

Dated: August 27, 1996.

Lynn E. Davis,

Under Secretary for Arms Control and International Security Affairs, Department of State.

[FR Doc. 96–23659 Filed 9–16–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010–AC13

Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for interim rule.

SUMMARY: This document extends to October 30, 1996, the deadline for the submission of comments on the interim rule governing royalty relief for producing leases and certain existing leases in deep water that was published May 31, 1996.

DATES: MMS will consider all comments we receive by October 30, 1996. We will begin reviewing comments at that time and may not fully consider comments we receive after October 30, 1996.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Chief, Engineering and Standards Division.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: The MMS has been asked to extend the deadline for respondents to submit comments to the interim regulations governing royalty relief on producing and certain existing leases in deep water that were published May 31, 1996 (61 FR 27263). More time is needed to allow respondents time to work on certain aspects and problem areas of the interim rule and guidelines for royalty relief for existing deep water leases.

Dated: September 9, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–23724 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[AK–004–FOR; Alaska Amendment IV]

Alaska Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the Alaska regulatory program (hereinafter referred to as the ''Alaska program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alaska proposed revisions to and additions of rules pertaining to fees for services, general permitting requirements, general permit application information requirements, environmental resource information requirements, reclamation and operation plan requirements, processing of permit applications, permitting for special categories of mining, exploration, the small operator assistance program, bonding, performance standards, inspection and enforcement, and general provisions. The amendment revised the Alaska program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: September 17, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, Federal Register (48 FR 12274). Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

II. Proposed Amendment

By letter dated January 26, 1995, and FAX transmittals dated February 13 and 14, 1995, Alaska submitted a proposed amendment (Amendment IV, administrative record No. AK–E–01) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Alaska submitted the proposed amendment at its own initiative and in response to (1) letters dated November 1, 1989, and February 7, 1990 (administrative record Nos. AK–60–05 and AK–60–06), that OSM sent to Alaska in accordance with 30 CFR 732.17(c), and (2) required program amendments at 30 CFR Part 902.16(a)(1), (2), (3), (6) through (14), and (16).

The provisions of the Alaska Administrative Code (AAC) that Alaska proposed to revise, repeal, and add were: 11 AAC 05.010(a)(9)(D), fees for incidental boundary revisions; 11 AAC 90.002, responsibilities; 11 AAC 90.003, continued operation under interim permits; 11 AAC 90.011, permit fees; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.025, authority to enter and ownership information; 11 AAC 90.045(a), geology description; 11 AAC 90.049(2), surface water information; 11 AAC 90.083(b), reclamation plan general requirements; 11 AAC 90.097, transportation facilities; 11 AAC 90.099, return of coal mine waste to abandoned underground workings; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's [of Natural Resources] findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.163, exploration that substantially disturbs the natural land surface or occurs in areas designated unsuitable for mining; 11 AAC 90.173(b), eligibility for small operator assistance; 11 AAC 90.207(f), self-bonding provisions; 11 AAC 90.321(d), hydrologic balance; 11 AAC 90.323(a), water quality standards; 11 AAC 90.325(a), diversions and conveyance of flows; 11 AAC 90.327 (b) and (c), stream channel diversions; 11 AAC 90.336(b), impoundment design and construction; 111 AAC 90.337(f), impoundment inspection; 11 AAC 90.341(b), underground mine entry and access discharges; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.375(f), public notice of blasting; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.401(e), coal mine waste, refuse piles; 11 AAC 90.407(e), coal mine waste, dams and embankments; 11 AAC 90.409, return of coal mine waste to underground workings; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443 (d) and (k), backfilling and grading; 11 AAC 90.457 (c) and (d), standards for revegetation success; 11 AAC 90.491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation orders; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions. Additionally, Alaska proposed several minor editorial revisions.

OSM announced receipt of the proposed amendment in the February 27, 1995, Federal Register (60 FR 10520), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. AK–E–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 29, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of the Alaska Administrative Code at 11 AAC 05.010(a)(9)(D) and 11 AAC 90.011, fees; 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's findings; 11 AAC 90.126, improvidently issued permits; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.173, eligibility for small operator assistance; 11 AAC 90.207(f), self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.409, return of materials to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90.457, revegetation success standards; 11 AAC 90.491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.601, inspections; 11 AAC 90.901, applicability; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; 11 AAC 90.907, public participation; and 11 AAC 90.911, definitions. OSM notified Alaska of the concerns by letter

dated July 19, 1995 (administrative record No. AK–E–12).

Alaska responded in letters dated October 11 and 24, 1995, and by a FAX transmittal dated October 23, 1995, by submitting a revised amendment and additional explanatory information and withdrawing certain provisions (administrative record No. AK–E–14). Alaska proposed revisions to and additional explanatory information for: 11 AAC 05.010(a)(9)(D) and 11 AAC 90.011, fees; 11 AAC 90.045(a), geology description; 11 AAC 90.099, return of coal mine waste and excess spoil to abandoned underground workings; 11 AAC 90.149(d), operations near alluvial valley floors; 11 AAC 90.163, exploration that occurs in an area designated unsuitable for surface coal mining; 11 AAC 90.207, self-bonding provisions; 11 AAC 90.327, stream channel diversions; 11 AAC 90.391, disposal of excess spoil or coal mine waste; 11 AAC 90.409, coal mine waste, return to underground workings; 11 AAC 90.423, protection of fish and wildlife; 11 AAC 90.443, backfilling and grading; 11 AAC 90491, construction and maintenance of roads, transportation and support facilities, and utility installations; 11 AAC 90.901, applicability; and 11 AAC 90907, public participation.

In addition, Alaska withdrew proposed revisions and additions at: 11 AAC 90.023, identification of interests and compliance information; 11 AAC 90.117, administrative processing of permit applications; 11 AAC 90.125, Commissioner's findings; 11 ACC 90.126, improvidently issued permits; 11 AAC 90.127, permit conditions; 11 AAC 90.129, permit revisions and renewals; 11 AAC 90.336, impoundment design and construction; 11 AAC 90.457, revegetation success standards; 11 AAC 90.601, inspections; 11 AAC 90.613, cessation order; 11 AAC 90.902, exemption for coal extraction incidental to the extraction of other minerals; and 11 AAC 90.911, definitions.

Based upon the revisions to and additional explanatory information for the proposed amendment submitted by Alaska and the withdrawal of certain proposed provisions, OSM reopened the public comment period in the November 9, 1995, Federal Register (60 FR 56547; administrative record No. AK–E–21). The public comment period ended on November 24, 1995.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by Alaska on January 26 and February 13 and 14, 1995, and as revised by it and supplemented with additional explanatory information on October 11, 23, and 24, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Alaska's Rules

Alaska proposed revisions to the following previously-approved rules that are non substantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulation provisions are listed in parentheses):

11 AAC 90.025(b) and (c) (30 CFR 778.15(a) and (b)), right of entry information,
11 AAC 90.049(2) and (2)(E) through (H) (30 CFR 780.21(b)(2) and 784.14(b)(2)), surface water information,
11 AAC 90.083(b)(10) and (11) (30 CFR 780.27, 780.37(a)(4), and 784.24(a)(4)), reclamation plan general requirements,
11 AAC 90.149(d) (30 CFR 785.19(b)(2)), operations near alluvial valley floors,
11 AAC 90.163(b), (c), and (c)(3)(B) (30 CFR 772.14(b)(1), and (b)(2)(i), exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining,
11 AAC 90.391(b) (30 CFR 816.71(b) and 817.71(b)), disposal of excess spoil or coal mine waste,
11 AAC 90.401(e) (30 CFR 816.83(c)(4) and 817.83(c)(4)), coal mine waste refuse piles,
11 AAC 90.491(a), (a)(7), (c)(4), and (c)(8) (30 CFR 816.150(b), (b)(4), (f)(4), and (f)(6) and 817.150(b), (b)(4), (f)(4), and (f)(6)), construction and maintenance of roads, transportation and support facilities, and utility installations, and
11 AAC 90.907(e), (f), (g), (h), and (j) (30 CFR 740.13(c), 772.12(c), 773.13, 774.17(c), 785.13(h), 800.40, and 840.15), public participation.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Alaska rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Alaska's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Alaska proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

11 AAC 05.010(a)(11)(D) and 11 AAC 90.011 (30 CFR 777.17), permit fees,
11 AAC 90.002 (30 CFR Part 772 and 773.11), responsibilities under general permitting requirements,
11 AAC 90.025(a) (30 CFR 778.13(e) and (f)), authority to enter and ownership information,
11 AAC 90.045(a) (30 CFR 780.22(b)(1) and 784.22(b)(1)), geology description,
11 AAC 90.049(2)(D) (30 CFR 780.21(b)(2) and 784.14(b)(1)), surface water information,
11 AAC 90.083(b)(12) (30 CFR 780.37(a)(6) and 784.24(a)(6)), reclamation plan general requirements,
11 AAC 90.097 (30 CFR 780.37(a)(1), (3), and (5) and 784.24(a)(1), (3), and (5)), transportation facilities,
11 AAC 90.149(d)(1) (30 CFR 785.19(d)(2)(1)), operations near alluvial valley floors,
11 AAC 90.163, (a), (b)(1), (c)(4), and (c)(5) (30 CFR 772.12(a) and 772.14(b), (b)(1), (3), and (4)), exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining,
11 AAC 90.207(f)(1), (2), and (4) through (7) (30 CFR 800.16(e)(2) and 800.23(b), (c)(1), and (d) through (g)), requirements for self-bonding,
11 AAC 90.375 (30 CFR 816.64(b) and 817.64(b)), public notice of blasting,
11 AAC 90.391 (h) and (s) (30 CFR 816.71 (g) and (i) and 817.71 (g) and (i)), disposal of excess spoil or coal mine waste,
11 AAC 90.407(e) (30 CFR 816.84(b)(2) and 817.84(b)(2)), coal mine waste, dams and embankments,
11 AAC 90.409 (30 CFR 816.71(j), 817.71(j), 816.81(f), and 817.81(f), return to underground workings,
11 AAC 90.423(b) and (h) (30 CFR 780.16(c), 784.21(c), 816.97(b), and 817.91(b)), protection of fish and wildlife,
11 AAC 90.443(d)(1) (30 CFR 816.106(b)(1) and 817.106(b)(1)), backfilling and grading of previously mined areas,
11 AAC 90.491(a)(1), (6), and (8), (c) (5) through (7), and (e) (30 CFR 816.150(b)(1), (3), (7), (d), and (f) (3) and (6); 816.181(b) (1) and (2)(ii), 817.150(b)(1), (3), and (7), (d), and (f) (3) and (6); and 817.181(b) (1) and (2)(ii)), construction and maintenance of roads, transportation and support facilities, and utility installations,
11 AAC 90.901(e) (30 CFR 700.11(d)(1)(ii)), applicability, and
11 AAC 90.907 (c) and (d) (30 CFR 840.14 (b) and (c)(2)), public participation.

Because these proposed Alaska rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. 11 AAC 90.003. Continued Operation Under Interim Permits

Alaska proposed to repeal 11 AAC 90.003, which provides that a person operation under a permit issued or amended by the Commissioner in accordance with section 502 of SMCRA

may conduct operations more than eight months after approval of the Alaska program if certain criteria are met. 11 AAC 90.003 is substantively the same as the counterpart Federal regulations at 30 CFR 773.11(b)(2), which provide for continuation of initial program operations when certain conditions are met. Alaska has informed OSM that there are no interim permits within the State. Therefore, the Director finds that 11 AAC 90.003 is no longer applicable in Alaska's program. The Director approves the repeal of this rule.

4. 11 AAC 90.099, Return of Coal Mine Waste and Excess Spoil to Abandoned Underground Workings

Alaska proposed to revise 11 AAC 90.099 to require that the underground mining plan must describe the design, operation, and maintenance of any proposed facility to return coal mine waste and excess spoil to underground workings, including flow diagrams and other drawing and maps required by the Commissioner, and that the permit application also include any plans required to be submitted to the Federal Mine Safety and Health Administration (MSHA) under 30 CFR 817.81(f). The Federal regulations at 30 CFR 784.25(a) provide, in pertinent part, that each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, for the approval of the regulatory authority and MSHA under 30 CFR 817.81(f). The performance standards at reference 30 CFR 817.81(f) and those concerning excess spoil at 30 CFR 817.71(j) allow for the disposal of coal mine waste *and excess spoil* in underground mine workings in accordance with a plan approved by the regulatory authority and MSHA under 30 CFR 784.25. Despite the fact that the plan requirements at 30 CFR 784.25 do not specifically provide for the underground disposal of excess spoil, the reference to 30 CFR 784.24 in the performance standard at 30 CFR 817.71(j), which provides that excess spoil may be disposed of in underground workings, clearly does provide for such disposal. Therefore, the Director finds that the proposed revision by Alaska at 11 AAC 90.099 is no less effective than the Federal regulations at 30 CFR 784.25(a), 817.81(f) and 817.71(j). The Director approves the revisions to this rule.

5. 11 AAC 90.163(C) (4) and (5), Exploration That Substantially Disturbs the Natural Land Surface or Occurs in an Area Designated Unsuitable for Surface Coal Mining

Alaska proposed the addition of new provisions at 11 AAC 90.163(c) (4) and (5) to require that the demonstration that coal testing is necessary for the development of a surface coal mining and reclamation operation must also include evidence that sufficient reserves of coal are available to the applicant for future commercial use or sale and an explanation of why other mean of exploration are not adequate. Proposed 11 AAC 90.163(c) (4) and (5) are substantively the same as the counterpart Federal regulations at 30 CFR 772.14(b) (3) and (4). They are also identical to existing 11 AAC 90.163(d) (1) and (2). It is not clear to OSM why Alaska choose to add 11 AAC 90.163(c) (4) & (5) to its rules when the same requirements already existed at 11 AAC 90.163(d) (1) and (2). The Director finds that the addition of the provisions at 11 AAC 90.163(c) (4) and (5) is superfluous; however, the addition of these provisions does not render Alaska's rule less effective than the counterpart Federal regulations at 30 CFR 772.14(b) (3) and (4). Therefore, the Director approves the addition of these rules.

6. 11 AAC 90.207(f), Requirements for Self-Bonding

Alaska proposed new rules at 11 AAC 90.207(f) to provide specific requirements for self-bonding. With the exceptions discussed below, the proposed 11 AAC 90.207(f) is substantively similar to the requirements of the counterpart Federal regulations at 30 CFR 800.23. Therefore, the Director finds proposed 11 AAC 90.207(f) to be no less effective than the Federal regulations and approves it.

a. 11 AAC 90.207(f), Definitions of ''self-bond'' and other terms concerning financial statements.—Alaska's rules at 11 AAC 90.207 do not define ''self-bond,'' which is an allowable form of bond under the Federal regulations at 30 CFR 800.23. The term ''self-bond'' as defined at 30 CFR 800.5(c) means ''an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the regulatory authority with or without a separate surety.''

OSM, in its July 19, 1995, issue letter, notified Alaska of the lack of a counterpart definition in its rules (issue No. 9). Alaska's response, dated October 11 and 24, 1995, provided that the term ''self-bond'' was defined at Alaska Statute (AS) 27.21.160(d). AS 27.21.160(d) is Alaska's statutory counterpart to section 509(c) of SMCRA, which provides the conditions under which the regulatory authority may accept a self-bond. Neither the Alaska statute nor the cited section of SMCRA define ''self-bond.'' Therefore, the Director finds that the lack of a definition of ''self-bond'' at 11 AAC 90.207(f) is less effective than the Federal regulations and is requiring Alaska to add a definition of ''self-bond'' to its rules or otherwise revise its program to define ''self-bond'' consistent with the Federal regulations at 30 CFR 800.5(c).

In addition, Alaska's proposed rules at 11 AAC 90.207(f) do not include definitions for financial statement terms associated with self-bonding such as ''current assets,'' ''current liabilities,'' ''fixed assets,'' ''liabilities,'' ''net worth,'' and ''tangible net worth.'' The Federal regulations at 30 CFR 800.23(a) provide definitions for financial statement terms because they are terms used in the provisions concerning self-bonding to clarify what is meant or required by the self-bonding financial tests. The terms are defined to avoid misunderstandings about what an applicant can and cannot include in its self-bonding application. This is necessary because not all financial term definitions are consistent with standard accounting definitions. For example, ''fixed assets,'' as defined for self-bonding, does not allow land and coal in place to be counted as fixed assets because they are difficult to evaluate and to liquidate. Standard accounting principles, on the other hand, allow land and coal in place to be counted as an asset when calculating total assets.

Therefore, the Director finds 11 AAC 90.207(f) to be less effective than the counterpart Federal regulations at 30 CFR 800.23(a) to the extent that the Alaska rule does not define the financial statement terms used specifically for self-bonding. The Director requires Alaska to provide financial statement definitions that are similar to the definitions provided in the Federal regulations or otherwise revise its program to be consistent with and no less effective than the Federal regulations at 30 CFR 800.23(a)

b. 11 90.207(f)(3), Agent for service.—The rules proposed by Alaska at 11 AAC 90.207(f)(3) provide requirements for acceptance of a corporate guarantee of an applicant's self-bond, including requirements concerning business history, submission of financial statements, and an agent for service of process in Alaska. These requirements are consistent with the Federal regulations at 30 CFR 800.23(c)(2), except that the Federal regulations contain an additional requirement concerning an agent for service for the applicant. The Director finds, to the extent that 11 AAC 90.207(f)(3) does not require an applicant whose self-bond is

guaranteed by a corporate guarantor to maintain its own agent for service of process in Alaska, that Alaska's rule is less effective than the counterpart Federal regulations at 30 CFR 800.23(c)(2). The Director requires Alaska to amend its rule to require an applicant for a self-bond to meet the requirements of 11 AAC 90.207(f)(1) (A), (C), *and (D),* otherwise revise its program to require the permittee to maintain an agent for service of process while its self-bond is guaranteed by a corporate guarantor.

7. 11 AAC 90.321(d), Hydrologic Balance

Alaska proposed at 11 AAC 90.321(d) to require that the Commissioner will, in the Commissioner's discretion, require operation of necessary ''siltation structures,'' rather than water treatment facilities, for as long as treatment is required. The counterpart Federal regulations at 30 CFR 816.41 (a) and (d) provide, in pertinent part, that the regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented and that if drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate, the operator shall use and maintain the necessary water-treatment facilities or water quality controls. Further, the Federal regulations at 30 CFR 701.5 define ''siltation structure'' to mean ''a sedimentation pond, a series of sedimentation ponds, or other treatment facility.'' Alaska has no counterpart definition for ''siltation structure.'' Because Alaska's rule lacks the requirement that the operator maintain and use necessary water-treatment facilities, not just siltation structures, the Director finds 11 AAC 90.321(d) to be less effective than the Federal regulations at 30 CFR 816.41 (a) and (d) and 817.41 (a) and (d). The Director does not approve 11 AAC 90.321(d) and requires Alaska to revise it by ensuring that water treatment facilities will be operated for as long as necessary or by adding a definition of ''siltation structure'' to its rules that is no less effective than the Federal definition of this term at 30 CFR 701.5.

8. 11 AAC 90.323(a), Water Quality Standards

Alaska proposed nonsubstantive editorial changes at 11 AAC 90.323(a), which are approved by the Director (see finding No. 1); however, existing language contained in this provision provides that discharges from underground workings to surface water and surface drainage from the disturbed area must pass through one or more ''siltation structures.'' As discussed in finding No. 7 above, the Director finds use of the term ''siltation structure'' to be less effective than the Federal regulations at 30 CFR 816.41 (a) and (d) and 817.41 (a) and (d). The Director requires Alaska to revise 11 AAC 90.323 (a) to replace ''siltation structures'' with ''sedimentation ponds or a treatment facility,'' or otherwise amend its regulatory program to provide a definition of ''siltation structures'' that is no less effective than the Federal definition of this term at 30 CFR 701.5.

9. 11 AAC 90.325(a), Diversions and Conveyance of Flow

Alaska proposed at 11 AACV 90.325(a) to require that all diversions and collection drains that are used to transport water into ''siltation structures,'' rather than ''treatment facilities,'' must meet the requirements of this section for diversions and conveyance of flow. The counterpart Federal regulations at 30 CFR 816.43(a) and (c)(2) and 817.43(a) and (c)(2) provide, in pertinent part, that all diversions shall be designed to minimize the adverse impacts to the hydrologic balance, which includes, as provided at 30 CFR 816.41(d)(1) and 817.41(d)(1), the use and maintenance of necessary water-treatment facilities or water quality controls if drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation or remedial practices are not adequate to meet the hydrologic-balance protection requirements and the water quality standards and effluent limitations. Therefore, because Alaska's rule uses the term ''siltation structure,'' which is not defined in the Alaska program, and because the rule lacks the requirement that the operator maintain and use necessary water-treatment facilities, not just siltation structures, the Director finds 11 AAC 90.325(a) to be less effective than the Federal regulations at 30 CFR 816.41(d)(1) and 817.41(d)(1), and does not approve the replacement of ''treatment facilities'' with ''siltation structures.'' The Director requires Alaska to revise 11 AAC 90.325(a) by ensuring that water treatment facilities will be operated for as long as necessary or by adding a definition of ''siltation structure'' to its rules that is no less effective than the Federal definition of this term at 30 CFR 701. 5.

10. 11 AAC 90.327(b)(1) and (c), Stream Channel Diversions

Alaska proposed at 11 AAC 90.327 (b)(1) and (c) to replace ''erosion control structures'' and ''water treatment facilities'' with the term ''siltation structures.'' The Director finds such replacement to be less effective than the counterpart Federal regulations at 30 CFR 816.43 (a)(1) and (3) and 817.43 (a)(1) and (3) for the reasons discussed below.

a. 11 AAC 90.327(b)(2), Design and Construction of stream channel diversions.—Alaska proposed at 11 AAC 90.327(b)(1) to require that ''siltation structures'' rather than ''erosion control structures'' must be approved by the Commissioner and should be used only if necessary to control erosion.

In the context of describing Federal performance standards for stream channel diversions, ''erosion control structures'' and ''siltation structures'' are different kinds of structures and not inter-changeable. The preamble for the Federal regulations at 30 CFR 816.44(b)(1) (44 FR 15399, March 13, 1979) stated that ''erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the regulatory authority as being necessary to control erosion.'' Because the Alaska program lacks a definition for ''siltation structures,'' it is not known whether ''siltation structures,'' as used here, would include structures such as channel linings, gabions, or retention basins. Therefore, the Director does not approve at proposed 11 AAC 90.327(b)(1) the replacement of the term ''erosion control structures'' with ''siltation structures,'' and requires Alaska to continue to use ''erosion control structures'' when describing standards for stream channel diversions used to control erosion.

b. 11 AAC 90.327(c), Removal of temporary stream channel diversions.—Alaska proposed at 11 AAC 90.327(c) to require that downstream ''siltation structures,'' rather than ''water treatment facilities,'' previously protected by the diversion, must be modified or removed at the time diversions are removed to prevent overtopping or failure of the facilities, and that this requirement does not relieve the operator from maintenance of a ''siltation structure,'' rather than a ''water treatment facility,'' otherwise required under this chapter or the permit. The counterpart Federal regulations at 30 CFR 816.43(a)(3) and

817.43(a)(3) require, in pertinent part, that downstream water-treatment facilities previously protected by a diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities, and that this requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. Because Alaska has not defined ''siltation structures,'' the Director finds that replacement of ''water treatment facilities'' or water treatment facility'' with ''siltation structures'' or ''siltation structure'' is less effective than 30 CFR 816.43(a)(3) and 817.43(a)(3). The Director is not approving proposed 11 AAC 90.327(c) and is requiring Alaska to revise it by retaining the terms ''water treatment facilities'' and ''water treatment facility,'' or to provide a definition of ''siltation structures'' that includes ''water-treatment facilities.''

11. 11 AAC 90.337(f), Impoundment Inspection

Alaska proposed at 11 AAC 90.337(f) to require that in addition to the formal inspections required under 11 AAC 90.337(a) through (e), all impoundments must be examined at least once a quarter by a qualified person for any appearances of structural weakness or other hazardous conditions. The Federal regulations at 30 CFR 816.49(a)(12) and 817.49(a)(12) require, in pertinent part, that impoundments not meeting the SCS (Soil Conservation Service, now Natural Resources Conservation Service) class B or C criteria for dams in TR–60, or subject to 30 CFR 77.216–3, shall be examined at least quarterly. The Director finds 11 AAC 90.337(f), which requires that *all* impoundments must be examined at least quarterly, is no less effective than the Federal regulations and approves the revisions to this rule.

12. 11 AAC 90.341(b)(2), Underground Mine Entry and Access Discharges

Alaska proposed at 11 AAC 90.341(b)(2) to replace ''treatment facility'' with ''siltation structure,'' and allow gravity discharge of water from an underground mine if all water discharged, whether treated or not, meets applicable State and Federal laws and regulations, and the Commissioner finds that consistent maintenance of any siltation structure required under 11 AAC 90.323 will occur throughout the anticipated period of gravity discharge. The Federal regulations at 30 CFR 817.41(i)(1) require, in pertinent part, that gravity discharges of water from underground mines may be allowed by the regulatory authority if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part. This part includes the provisions at 817.41(d)(1), concerning protection of the hydrologic balance and monitoring, 817.42, concerning water quality standards, and 817.46(b)(5), concerning maintenance of siltation structures until removal is authorized by the regulatory authority. As discussed in previous findings, because Alaska has not defined ''siltation structures,'' the Director finds that use of the term ''siltation structures'' is less effective than the Federal regulations at 30 CFR 817.46(b)(5). The Director does not approve proposed 11 AAC 90.341(b)(2) and requires Alaska to revise it to provide for consistent maintenance of any treatment facility used during the anticipated period of gravity discharge, or otherwise revise its regulatory program to ensure that ''siltation structure'' is defined in accordance with 30 CFR 701.5.

13. 11 AAC 90.345(e), Surface and Ground Water Monitoring

Alaska proposed at 11 AAC 90.345(e), concerning the monitoring of stream, lake, and other surface water bodies that may be affected by the mining operation or that will receive a discharge, to require that the monitoring must be conducted at both upstream and downstream locations in all receiving water bodies. The Federal regulations concerning ground-water and surface-water monitoring at 30 CFR 816.41(c) and (e) and 817.41(c) and (e) require that monitoring shall be conducted according to the ground-water monitoring plan and surface-water monitoring plan approved under 30 CFR 780.21(i) and (j) for surface mining activities and 30 CFR 784.14(h) and (i) for underground mining activities, and that the regulatory authority may require additional monitoring when necessary. There is no specific Federal regulatory counterpart to Alaska's proposed rule at 11 AAC 90.345(e), which requires both upstream and downstream monitoring locations. However, the proposed requirement is not inconsistent with the Federal regulations. Therefore, the Director finds that proposed 11 AAC 90.345(e) is no less effective than 30 CFR 816.41(c) and (e) and 817.41(c) and (e), which provide, in addition to conducting monitoring in accordance with the approved monitoring plan, that the regulatory authority may require additional monitoring when necessary. The Director approves the proposed revisions to this rule.

14. 11 AAC 90.443(k), Backfilling and Grading

Alaska proposed new language at 11 AAC 90.443(k) to provide that spoil shall be returned to the mined-out area, except for (1) excess spoil disposed of in accordance with 11 AAC 90.391, and (2) spoil necessary to blend regraded areas into the surrounding terrain in non-steep slope areas so long as all vegetative and organic material is removed. The counterpart Federal regulations at 30 CFR 816.102(b) provide that spoil, except excess spoil disposed of in accordance with 30 CFR 816.71 through 816.74, shall be returned to the mined-out area. In addition, 30 CFR 816.102(d) (1) through (3) provide that spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if certain requirements are met, including removal of all vegetative and organic material, removal, segregation, storage and redistribution of topsoil, and backfilling and grading of the spoil in accordance with the requirements of 30 CFR 816.102.

Alaska's proposed rule at 11 AAC 90.443(k) is similar to the Federal regulations at 30 CFR 816.102 (b) and (d), except that Alaska's rule does not require that (1) the topsoil on the area outside the mined-out area in nonsteep slope areas be removed, segregated, stored, and redistributed in accordance with Alaska's counterpart to the cited Federal regulation at 30 CFR 816.22, and (2) the spoil to be placed on the area outside the mined-out area in nonsteep slope areas be backfilled and graded in accordance with the requirements of Alaska's counterpart to the cited Federal regulation at 30 CFR 816.102. Therefore, the Director finds, to the extent that Alaska's rule at 11 AAC 90.443(k) lacks the counterpart requirements of the Federal regulations at 30 CFR 816.102(d) (2) and (3), 11 AAC 90.443(k) to be less effective than the Federal regulations. The Director approves proposed 11 AAC 90.443(k), but requires Alaska to revise it to provide that the topsoil on the area outside the mined-out area in nonsteep slope areas shall be removed, segregated, stored and redistributed in accordance with its topsoil removal provisions and that the spoil be backfilled and graded on the area in accordance with its provisions concerning performance standards for backfilling and grading, or otherwise amend its program to ensure that the disposal of spoil provisions are no less effective than the Federal regulations at 30 CFR 816.102(d) (2) and (3).

15. 11 AAC 90.491(f) Construction and Maintenance of Roads

Alaska proposed at 11 AAC 90.491(f) that any road used to transport coal or spoil, frequently used in excess of six months for access or other purposes, or retained for an approved postmining land use, must meet several additional requirements, including certification, safety factor, location, drainage control, and surfacing. Proposed 11 AAC 90.491(f) is substantively the same as the counterpart Federal regulations at 30 CFR 816.150(b) and 817.150(b) and 816.151 (a) through (c), (d) (1) through (4), and (e) and 817.151 (a) through (c), (d) (1) through (4), and (e). However, proposed 11 AAC 90.491(f) lacks provisions that are required by the Federal regulations at 30 CFR 816.151(c)(2), (d)(5), and (d)(6) and 817.151(c)(2), (d)(5) and (d)(6), concerning fords of perennial or intermittent streams, the alteration or relocation of natural stream channels, and structures for perennial or intermittent stream channel crossings. Alaska proposed new language at 11 AAC 90.097 concerning reclamation plan general requirements for transportation facilities, to require that the surface coal mining application contain the specifications for each low water crossing and temporary stream ford (see finding No. 2), but Alaska did not include all the necessary performance standards concerning location and drainage control. With the exception of the lack of necessary provisions discussed above, the Director finds that proposed 11 AAC 90.491(f) is no less effective than the Federal regulations at 30 CFR 816.151 and 817.151 and approves it. The Director is, however, requiring Alaska to revise 11 AAC 90.491(f) to ensure that its performance standards for primary roads include requirements concerning fords, alteration or relocation of natural stream channels, and stream crossings, or otherwise revise its program to provide counterpart provisions to the Federal regulations at 30 CFR 816.151(c)(2), (d)(5), and (d)(6) and 817.151(c)(2), (d)(5), and (d)(6).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Alaska program (administrative record Nos. AK–E–2 and AK–E–16).

U.S. Bureau of Reclamation (BOR).—By letter dated March 15, 1995, the BOR Washington, D.C. office responded that it does not have jurisdiction in the Alaska area (administrative record No. AK–E–6). OSM has, therefore, removed the BOR Washington, D.C. office from the mailing list soliciting comments on Alaska amendments.

Bureau of Land Management (BLM).—By letters dated March 17 and November 9, 1995, the BLM Alaska State Office responded that the amendment created no potential conflicts with the management criteria of the BLM surface management program in Alaska concerning mineral development. Therefore, BLM had no comments on the proposed amendment (administrative record Nos. AK–E–7 and AK–E–19).

U.S. Bureau of Mines (BOM).—The BOM Washington, D.C. office responded on March 17 and November 2, 1995, that it had no comments (administrative record Nos. AK–E–8 and AK–E–18). In addition, the BOM Alaska Field Operations Center responded on March 27, 1995, that it had no comments on the proposed revisions (administrative record No. AK–E–11).

U.S. Fish and Wildlife Service (FWS).—FWS responded on March 22, 1995, that it was not able to thoroughly review the proposed changes to Alaska's rules due to staffing and funding constraints, and therefore, it had no specific comments (administrative record No. AK–E–9).

U.S. Department of Energy (DOE).—By letters dated March 21 and November 1, 1995, the DOE Alaska Power Administration responded on that it had no comments (administrative record Nos. AK–E–10 and AK–E–17).

Natural Resources Conservation Service (NRCS).—NRCS responded on December 5, 1995, with comments on the proposed amendment (administrative record No. AK–E–20).

NRCS commented that the ''history of farming'' at 11 AAC 90.149(d) should be expanded to include ''or potential for farming.'' NRCS stated that many alluvial valley floors have soil and climate characteristics suitable for agriculture and that even though the total existing acres in production in Alaska are limited due to market conditions, that should not preclude maintaining hydrologic functions on areas with agriculture potential. NRCS suggested that these areas can be identified using existing Department of Natural Resources guidelines for identifying lands with agricultural potential.

Alaska's rule at 11 AAC 90.149(d) provides, in pertinent part, that certain information must be included in the permit application if the proposed operation may affect an alluvial valley floor, unless the Commissioner determines that some or all of the information is unnecessary because the particular valley floor has no history of farming, is not subirrigated, or has no deficiency of water. The counterpart Federal regulations at 30 CFR 785.19(b)(2) and (d)(1) provide, in pertinent part, for statutory exclusions concerning alluvial valley floors, including determinations by the State regulatory authority that (1) the premining land use is undeveloped rangeland which is not significant to farming or (2) any farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production. Farm, as used in these Federal regulations, is one or more land units on which farming is conducted and a farm is considered to be the combination of land units with acreage and boundaries in existence prior to enactment of SMCRA, or if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity.

The Federal regulations do not specifically address ''history of farming'' or ''potential for farming.'' However, OSM has determined that Alaska's rule at 11 AAC 90.149(d) is no less effective than the Federal regulations at 30 CFR 785.19(d)(2) (see finding No. 1). OSM interprets the phrase ''history of farming'' to be consistent with the exceptions provided at 30 CFR 785.19(b)(2) in that the Federal regulations require the regulatory authority to determine the presence or absence of an alluvial valley floor, and if an alluvial valley floor is present, then the regulatory authority determines the premining land use and extent of farming in relation to the farm's agricultural production. If there is no history of farming on the lands, then the premining land use was not farming nor will a surface coal mining operation impact the farm's agricultural production. Therefore, OSM is not requiring Alaska to revise 11 AAC 90.149(d).

NRCS questioned why areas with permafrost or ice-covered ponds are

excluded from the provisions at 11 AAC 90.323(a). NRCS stated that permafrost or ice-covered ponds should have no impact on the need for siltation structures to maintain water quality because many areas with permafrost will, upon disturbance, mining or otherwise, release considerable sediment-laden water as the permafrost thaws. NRCS also commented that the relevancy of ice-covered ponds is not clear at all. Alaska's rule at 11 AAC 90.323(a) provides for protection of the hydrologic balance and requires, in pertinent part, that the Commissioner must make a finding, when conditions such as permafrost or ice-covered ponds are present, that the drainage will meet the applicable State and Federal water quality laws and regulations without treatment. What NCRA has interpreted to be an exclusion from the requirements of 11 AAC 90.323(a) is not an exclusion from the requirement to meet the State's water quality standards. Therefore, OSM is not requiring Alaska to revise 11 AAC 90.323(a) to remove the language concerning permafrost and ice-covered ponds.

Concerning proposed 11 AAC 90.391, NRCS questioned to what standards must revegetation occur, whether this meant native species, and if revegetation had to be compatible with the post-mining land use. Proposed 11 AAC 90.391(s) requires, in pertinent part, that all disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction. The requirements of proposed 11 AAC 90.391(s) concern stabilization of the surface area and are substantively the same as the counterpart Federal regulations at 816.71(g) and 817.71(g) (see finding No. 2). OSM states that the performance standards for revegetation are provided at 30 CFR 816.111 and 817.111, including the use of native species and compatibility with the approved postmining land use. Therefore, vegetative cover used for surface area stabilization must meet the specific requirements addressed by NRCS's questions concerning revegetation.

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Alaska proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (administrative record No. AK–E–03). EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. AK–E–02). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Alaska's proposed amendment as submitted on January 26 and February 13 and 14, 1995, and as revised and supplemented with additional explanatory information on October 11, 23, and 24, 1995.

With the requirement that Alaska further revise its rules, the Director does not approve, as discussed in:

(1) Finding No. 7, 11 AAC 90.321(d), concerning hydrologic balance,

(2) Finding No. 9, 11 AAC 90.325(a), concerning diversions and conveyance of flow,

(3) Finding No. 10(a) and (b), 11 AAC 90.327(b)(1) and (c), concerning stream channel diversions, and

(4) Finding No. 12, 11 AAC 90.341(b)(2), concerning underground mine entry and access discharges.

The Director approves, as discussed in:

(1) finding No. 1, 11 AAC 90.025(b) and (c), concerning right of entry information, 11 AAC 90.049(2) and (2)(E) through (H), concerning surface water information, 11 AAC 90.083(b)(10) and (11), concerning reclamation plan general requirements, 11 AAC 90.149(d), concerning operations near alluvial valley floors, 11 AAC 90.163(b), (c), and (c)(3)(B), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining, 11 AAC 90.391(b), concerning disposal of excess spoil or coal mine waste, 11 AAC 90.401(e), concerning coal mine waste refuse piles, 11 AAC 90.491(a), (a)(7), (c)(4), and (c)(8), concerning construction and maintenance of roads, transportation and support facilities, and utility installations, and 11 AAC 90.907(e), (f), (g), (h), and (j), concerning public participation;

(2) Finding No. 2, 11 AAC 05.010(a)(11)(D) and 11 AAC 90.011, concerning permit fees, 11 AAC 90.002, concerning responsibilities, 11 AAC 90.025(a), concerning authority to enter and ownership information, 11 AAC 90.045(a), concerning geology description, 11 AAC 90.049(2)(D), concerning surface water information, 11 AAC 90.083(b)(12), concerning reclamation plan general requirements, 11 AAC 90.097, concerning transportation facilities, 11 AAC 90.149(d)(1), concerning operations near alluvial valley floors, 11 AAC 90.163, (a), (b)(1), (c)(4), and (c)(5), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for mining, 11 AAC 90.207(f)(1), (2), and (4) through (7), concerning requirements for self-bonding, 11 AAC 90.375, concerning public notice of blasting, 11 AAC 90.391(h) and (s), concerning disposal of excess spoil or coal mine waste, 11 AAC 90.407(e), concerning coal mine waste dams and embankments, 11 AAC 90.409, concerning return to underground workings, 11 AAC 90.423(b) and (h), concerning protection of fish and wildlife, 11 AAC 90.443(d)(1), concerning backfilling and grading previously mined areas, 11 AAC 90.491(a)(1), (6), and (8), (c)(5) through (7), (e), and (f)(1) through (9), concerning construction and maintenance of roads, transportation and support facilities, and utility installations, 11 AAC 90.901(e), concerning authority, and 11 AAC 90.907(c) and (d), concerning public participation;

(3) Finding No. 3, 11 AAC 90.003, repeal of provisions concerning continued operation under interim permits;

(4) Finding No. 4, 11 AAC 90.099, concerning return of coal mine waste and excess spoil to abandoned underground workings;

(5) Finding No. 5, 11 AAC 90.163(c)(4) and (5), concerning exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for surface coal mining;

(6) Finding No. 11, 11 AAC 90.337(f), concerning impoundment inspections; and

(7) Finding No. 13, 11 AAC 90.345(e), concerning surface and ground water monitoring.

With the requirement that Alaska further revise its rules, the Director approves, as discussed in:

(1) Finding No. 6a., 11 AAC 90.207(f), concerning definitions of ''self-bond'' and other terms concerning financial statements,

(2) Finding No. 6b, 11 AAC 90.207(f)(3), concerning an agent for service,

(3) Finding No. 8, 11 AAC 90.323(a), concerning water quality standards,

(4) Finding No. 14, 11 AAC 90.443(k), concerning backfilling and grading, and

(5) Finding No. 15, concerning construction and maintenance of roads.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 902.16 that, within 60 days of the publication of this final rule, Alaska must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Alaska's established administrative or legislative procedures.

The Director approves the rules as proposed by Alaska with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 902, codifying decisions concerning the Alaska program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Alaska program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by [State] of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

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

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates Reform Act

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

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 26, 1996.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 902—ALASKA

1. The authority citation for part 902 continues to read as follows:

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

2. Section 902.15 is amended by adding paragraph (d) to read as follows:

§ 902.15 Approval of regulatory program amendments.

* * * * *

(d) With the exception of 11 AAC 207(f), concerning requirements for self-bonds, 11 AAC 90.321(d), concerning hydrologic balance, 11 AAC 90.323(a), concerning water quality standards, 11 AAC 90.325(a), concerning diversions and conveyance of flow, 11 AAC 90.327(b)(1) and (c), concerning stream channel diversions, 11 AAC 90.341(b)(2), concerning underground mine entry and access discharges, 11 AAC 90.443(k), concerning backfilling and grading, and 11 AAC 90.491(f), concerning construction and maintenance of roads, the revisions to and additions of rules proposed in Alaska Amendment IV, as submitted to OSM on January 26, 1995, and as revised on October 11, 23, and 24, are approved effective September 17, 1996.

3. Section 902.16 is amended by adding the introductory paragraph and paragraph (b) to read as follows:

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Alaska is required to submit to OSM by the specified date the following written, proposed program amendments, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Alaska's established administrative or legislative procedures.

* * * * *

(b) By November 18, 1996, Alaska shall revise the following rules, or otherwise modify its program, to:

(1) At 11 AAC 90.207(f), require the addition of a definition for the term ''self-bond'' and other financial terms used to describe self-bonds consistent with the Federal regulations at 30 CFR 800.5(c) and 800.23(a), and to require the applicant for a self-bond that is guaranteed by a corporate guarantor to retain his/her own agent for service in Alaska.

(2) At 11 AAC 90.321(d), require that water treatment facilities will be operated for as long as necessary, or add a definition of ''siltation structure'' that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(3) At 11 AAC 90.323(a), replace ''siltation structures'' with ''treatment facilities,'' or add a definition of ''siltation structure'' that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(4) At 11 AAC 90.325(a), require that water treatment facilities will be operated for as long as necessary or add a definition of ''siltation structure'' that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(5) At 11 AAC 90.327(b)(1) and (c), require that ''erosion control structures'' be used when describing standards for stream channel diversions used to control erosion, and that the terms ''water treatment facilities'' and ''water treatment facility'' be retained or provide a definition of ''siltation structures'' that includes ''water-treatment facilities.''

(6) At 11 AAC 90.341(b)(2), require that any treatment facility used during the anticipated period of gravity discharge will be consistently maintained, or add a definition of ''siltation structure'' that is no less effective than the Federal definition of this term at 30 CFR 701.5.

(7) At 11 AAC 90.443(k), require that the topsoil on the area outside the mined-out area in nonsteep slope areas shall be removed, segregated, stored and redistributed in accordance with its topsoil removal provisions and that the spoil be backfilled and graded on the area in accordance with its provisions concerning performance standards or backfilling and grading, or add provisions to ensure that the disposal of spoil provisions are no less effective than the Federal regulations at 30 CFR 816.102(d) (2) and (3).

(8) At 11 AAC 90.491(f), require the addition of provisions concerning fords of perennial or intermittent streams, the alteration or relocation of natural stream channels, and structures for perennial or intermittent stream channel crossings that are no less effective than 30 CFR 816.151(b)(2), (d)(5), and (d)(6) and 817.151(b)(2), (d)(5) and (d)(6).

[FR Doc. 96–23677 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300436; FRL–5395–8]

RIN 2070–AB78

Pyridaben; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of the insecticide/miticide pyridaben in or on the raw agricultural commodity apples and the processed feed commodity wet apple pomace in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of pyridaben on apples in Delaware, New Jersey, and Virginia. This regulation establishes maximum permissible levels for residues of pyridaben in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). The tolerances will expire and be revoked automatically without further action by EPA on August 23, 1997.

DATES: This regulation becomes effective September 17, 1996. This regulation expires and is revoked automatically without further action by EPA on August 23, 1997. Objections and requests for hearings must be received by EPA on November 18, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300436], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300436], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300436]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8328, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide/miticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] in or on apples at 0.5 part per million (ppm) and in or on wet apple pomace at 1.0 ppm. These tolerances will expire and be revoked automatically without further action by EPA on August 23, 1997.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Section 408(b)(2)(D) specifies factors EPA is to consider in establishing a tolerance. Section 408(b)(3) requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above the limit of detection of the designated method. Section 408(b)(4) requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. If so, and EPA does not propose to adopt that level, EPA must publish for public comment a notice explaining the reasons for departing from the Codex level. Section 408(c) governs EPA's establishment of exemptions from the requirement for a tolerance using the same safety standard as section 408(B)(2)(A) and incorporating the provisions of section 408(b)(2)(C) and (D).

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166. Generally, these regulations allow a State or Federal agency to apply for an exemption to allow use of a pesticide for which that pesticide is not registered to alleviate an emergency condition. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Prior to FQPA, when EPA granted an emergency exemption under section 18 in connection with use of a pesticide that could result in residues of the pesticide chemical in or on food, EPA did not establish a tolerance or exemption from the requirement for a tolerance under FFDCA. Rather, EPA advised the Food and Drug Administration (FDA) of the emergency exemption and of the level of residues that EPA concluded would be present in or on affected foods as a result of the emergency use. However, new section 408(l)(6) requires EPA to establish a tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(e) gives EPA general authority to establish tolerances and exemptions from the requirement for a tolerance through notice and comment rulemaking procedures upon EPA's initiative. Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under authority of section 408(e) and (l)(6) without notice and comment rulemaking. The other procedures set out in section 408(e) and (g) are applicable to these tolerances and exemptions. Tolerances and exemptions issued under section 408(l)(6) must be consistent with the safety standards in section 408(b)(2) and (c)(2), respectively, that are applicable to all tolerances and exemptions under section 408, and with FIFRA section 18. Section 408(l)(6) specifies that such tolerances and exemptions must have an expiration date but does not specify how EPA is to set such an expiration date.

In light of FQPA, EPA is engaged in an intensive process, including consultation with registrants, States, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. This process will generally delay the review of food use applications, particularly those involving exposure to children. However, recognizing the importance of FIFRA section 18 emergency exemptions and their time sensitive nature, EPA will continue to process section 18 applications for food uses which clearly are emergencies and which clearly are consistent with the new FFDCA section 408 safety standard and with FIFRA section 18. EPA will publish a notice in the Federal Register soon summarizing the requirements of FQPA, indicating how EPA intends to meet those requirements, and describing actions necessary to assure that EPA complies with the law. EPA intends to promulgate the procedural rule required under section 408(l)(6) by August 3, 1997, but EPA also intends to continue to grant appropriate section 18 emergency exemptions and issue the associated tolerances and exemptions in the interim pending promulgation of that rule. EPA also intends to issue interim guidance to States and others on how EPA will implement section 18 of FIFRA and section 408(l)(6) in the near future.

EPA intends to address how it will provide an expiration date for section 408(l)(6) tolerances and exemptions in the general procedural rule to be promulgated by August 3, 1997. In the interim, EPA has decided to proceed as follows. Section 408(l)(5) specifies that, if a tolerance or exemption from the requirement for a tolerance for a pesticide chemical residue in or on a food has been revoked under section 408, food containing the residue is not unsafe (and thus subject to action by FDA as ''adulterated'') if ''the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful'' under FIFRA and ''the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance....'' Taking section 408(l)(5) and (6) together, EPA has concluded that the best way to effect an ''expiration date'' during this interim period for a tolerance or exemption established in connection with EPA's grant of a FIFRA section 18 emergency exemption is to specify that the tolerance or exemption will expire and be revoked automatically, without further action by EPA, as of a specified date. That date will generally be approximately 1 year from the date of issuance of the emergency exemption. Under section 408(l)(5), food that contains residues of the pesticide chemical as a result of lawful use under the terms of the section 18 emergency exemption, and at levels that are within those set by the tolerance or exemption that was established under section 408(l)(6) in connection with the section

18 action, would remain lawful after the tolerance or exemption is automatically revoked. EPA believes that handling the section 18-related tolerances and exemptions in this manner will allow EPA to respond promptly to emergency conditions during this interim period and will ensure that food containing pesticide residues as a result of use under an emergency exemption will not be considered ''adulterated.''

In deciding to continue to act on section 18 emergency exemptions and to issue the associated tolerances and exemptions early in the process of FQPA implementation, EPA recognizes that it will be necessary to make decisions about the new FFDCA section 408, including the new safety standard. In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Pyridaben on Apples and FFDCA Tolerances

On August 23, 1996, EPA approved emergency exemptions under FIFRA section 18 for the states of Delaware, New Jersey and Virginia for use of pyridaben on apples in those states to control European red mite and two-spotted spider mite. Emergency conditions are determined to exist since there are no effective pesticides available for late-season use in Integrated Pest Management (IPM) programs for control of mites in Delaware, New Jersey and Virginia. The available data indicate that pyridaben is effective for mite control and is compatible with mid-Atlantic apple IPM programs.

As part of its assessment of these applications for emergency exemptions, EPA assessed the potential risks presented by residues of pyridaben in or on apples and all foods derived from such apples. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerances under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. These tolerances for pyridaben will permit the marketing of apples treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on August 23, 1997, under FFDCA section 408(l)(5), residues of pyridaben not in excess of the amounts specified in the tolerances remaining in or on apples and wet apple pomace (and foods derived from such apples) after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether pyridaben meets the requirements for registration under FIFRA section 3 for use on apples or whether permanent tolerances for pyridaben for apples and wet apple pomace would be appropriate. This action by EPA does not serve as a basis for registration of pyridaben by a State for special local needs under FIFRA section 24(c). For additional information regarding the emergency exemptions for pyridaben, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no observed effects level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of

the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately 1 in 1 million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Pyridaben is already registered by EPA for greenhouse use on non-food ornamental plants. EPA has also assessed the toxicology data base for pyridaben in its evaluation of applications for registration on apples and citrus. Thus, while EPA has made no decision on the pending registration application for apples and citrus, EPA has sufficient data to assess the hazards of pyridaben and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of pyridaben on apples at 0.5 ppm and apple pomace at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic effects.* Based on the available chronic toxicity data, EPA has established the RfD for pyridaben at 0.005 milligrams(mg)/kilogram(kg)/day. The RfD for pyridaben is based on a 1–year feeding study in dogs with a No-Observed Adverse Effect Level (NOAEL) of 0.5 mg/kg/day and an uncertainty factor of 100. For this chemical, EPA has used the NOAEL instead of a NOEL because effects that were judged by EPA to be minor were observed at the lowest dose tested (0.5 mg/kg/day). The effects observed at the NOAEL were vomiting, excessive salivation, and soft stool/diarrhea (all clinical signs unassociated with changes in biochemical parameters and histopathology). EPA questioned the biological significance of the small increase in these effects as compared to effects noted in the control group. Futher, after consideration of the frequency, severity, and transient nature of effects observed, EPA concluded that any effects noted at the 0.5 mg/kg/day feeding level (the NOAEL) were sufficiently negligible as to not require the application of an additional uncertainty factor above the 100-fold factor already applied to the NOAEL.

2. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that pyridaben does not pose any acute dietary risks.

3. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified pyridaben as Group ''E'' for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment would not be appropriate.

B. Aggregate Exposure

For purposes of assessing the potential dietary exposure under these tolerances, EPA has estimated aggregate exposure based on the TMRC from the tolerance for pyridaben on apples at 0.5 ppm and apple pomace at 1.0 ppm. The TMRC is obtained by multiplying the tolerance level residue for apples (0.5 ppm) by the consumption data which estimates the amount of apples and apple products eaten by various population subgroups. Apple pomace is fed to animals; thus exposure of humans to residues in apple pomace might result if such residues are transferred to meat, milk, poultry, or eggs. However, based on the results of animal metabolism studies and the amount of pyridaben residues expected in animal feeds, EPA has concluded that there is no reasonable expectation that measurable residues of pyridaben will occur in meat and milk under the terms of this emergency exemption. Apple pomace is not a poultry feed item, thus no residues are expected in poultry or eggs. There are no other established U.S. tolerances for pyridaben, and there are no registered uses for pyridaben on food or feed crops in the United States. In conducting this exposure assessment, EPA has made very conservative assumptions—100% of apples will contain pyridaben residues and those residues would be at the level of the tolerance—which result in an overestimate of human exposure. Thus, in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure to residues of pyridaben in drinking water. There is no established Maximum Concentration Level for residues of pyridaben in drinking water. EPA has not estimated non-occupational exposure for pyridaben since the current registration for pyridaben is limited to commercial greenhouse use for non-food ornamental plants and the only other use will be for commercial apple production under the conditions of the section 18 emergency exemptions EPA just granted. The potential for non-occupational exposure to the general population is, thus, not expected to be significant.

EPA also considered the potential for cumulative effects of pyridaben and other substances that have a common mechanism of toxicity. EPA concluded that consideration of a common mechanism of toxicity is not appropriate at this time. EPA does not have reliable information to indicate that toxic effects produced by pyridaben would be cumulative with those of any other chemical compounds; thus EPA is considering only the potential risks of pyridaben in its aggregate exposure assessment.

C. Safety Determinations

1. *U.S. population in general.* Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicity data, EPA has concluded that aggregate exposure to pyridaben will utilize 6.8 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridaben residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pyridaben, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal

development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity (delayed ossification) was observed in studies using rats and rabbits. The (NOEL's) for developmental effects were established at 13 mg/kg/day in the rat study and 15 mg/kg/day in the rabbit study. The developmental effect observed in these studies is believed to be a secondary effect resulting from maternal stress (decreased body weight gain and food consumption).

In a 2-generation reproduction study in rats, pups from the high dose group, which were fed diets containing 80 ppm pyridaben, gained less weight beginning on lactation day 14. The only effects seen in pups were decreased body weight gain, indicating that they were receiving the test compound from the diet. Parental systemic toxicity including decreased body weights, body weight gains and food efficiency in males, and slightly decreased body weights and body weight gains in females during lactation was also observed in the high dose group. The LOEL for parental systemic toxicity is 80 ppm (equivalent to 6.31 and 7.82 mg/kg/day in male and females, respectively). The NOEL for parental systemic toxicity is 28 ppm (equivalent to 2.20 and 2.41 mg/kg/day in male and females, respectively). There was no effect on reproductive parameters at all dose levels tested in this study.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Further, for the chemical pyridaben, the NOAEL at 0.5 mg/kg/day from the dog study, which was used to calculate the RfD (discussed above), is already lower than the NOEL's from the developmental studies in rats and rabbits by a factor of more than 10-fold. As to the reproduction study, the lack of severity of the pup effects observed (decreased body weight) in the reproduction study at the systemic LOEL and the fact that the effects began at day 14 and continued through adulthood suggests that there is no additional sensitivity for infants and children. Therefore; EPA concludes that an additional uncertainty factor is not warranted and that the RfD at 0.005 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of pyridaben ranges from 9.6 percent for children 7 to 12 years old, up to 63 percent for non-nursing infants. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridaben residues.

D. Other Considerations

The metabolism of pyridaben in plants and animals is adequately understood for the purposes of these tolerances. There are no Codex maximum residue levels established for residues of pyridaben on apples or wet apple pomace. There is a practical analytical method for detecting and measuring levels of pyridaben in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703–305–5805.

E. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of pyridaben in apples at 0.5 ppm and wet apple pomace at 1.0 ppm. These tolerances will expire and be automatically revoked without further action by EPA on August 23, 1997.

IV. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 18, 1996, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

V. Public Docket

A record has been established for this rulemaking under docket number [OPP–300436] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI,

is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

VI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, analysis under the Regulatory Flexibility Act, 5 U.S.C. 604(a), is not required.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 6, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180— [AMENDED]

1. In part 180:

a. The authority citation for part 180 is revised to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By adding a new § 180.494 to read as follows:

§ 180.494 Pyridaben; tolerances for residues.

(a) [Reserved].

(b) *Time-limited tolerances.* Time-limited tolerances are established for residues of the insecticide/miticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. Each tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Apples	0.5	August 23, 1997
Apples, pomace, wet	1.0	August 23, 1997

[FR Doc. 96–23905 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 950725189–6245–04 ; I.D. 060696A]

RIN 0648–AI92

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS implements commercial vessel trip limits for the Atlantic migratory group of king mackerel. The intended effects of this rule are to preclude an early closure of the commercial fishery, protect king mackerel from overfishing, and maintain healthy stocks while still allowing catches by important commercial fisheries.

EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the framework rulemaking procedures of the FMP, the South Atlantic Council (Council) recommended, and NMFS published, a proposed rule to establish commercial vessel trip limits for the Atlantic migratory group of king mackerel (61 FR 34785, July 3, 1996). That proposed rule described the FMP framework procedures through which the Council recommended the trip limits and explained the need and rationale for

them. Those descriptions are not repeated here.

Comments and Responses

Three letters were received during the comment period. One from the Council supported the proposed trip limits and requested approval and expedient implementation to forestall a possible closure during the 1996–97 season. The other two—from a gillnet fisherman and a commercial fishermen's organization—opposed the trip limits. Similar comments were addressed in the final rule implementing the partially approved 1995–96 mackerel catch specifications (60 FR 57686; November 17, 1995) and in the proposed rule announcing this action (61 FR 34785; July 3, 1996).

National Standard 1

Comment: One commenter stated that trip limits for Atlantic group king mackerel are unnecessary and inconsistent with maintaining optimum yield (OY) and maximizing benefits to everyone. He further commented that such proposals designed to decrease efficiency and prevent quota overruns are not justifiable considering that the annual commercial quota has not been harvested since the 1988–89 season and that the resource is not considered overfished.

Response: National Standard 1 requires conservation and management measures to prevent overfishing while achieving, on a continuing basis, the OY from each fishery. NMFS believes the trip limits will not preclude harvest of the commercial quota or achievement of OY. Rather, in consideration of newly available stock assessment information and the Council's recent actions to reduce total allowable catch (TAC) and quotas, NMFS has determined that the trip limits are necessary to achieve the objectives of the FMP and those specified for this action. Specifically, the trip limits should: Prevent user groups from exceeding their traditional portion of the quota; reduce the likelihood of a closure that would negatively impact commercial fisheries north of Florida; limit harvest during the spawning period, and, thus protect the stock from recruitment overfishing and help in rebuilding it to the level capable of meeting the long-term OY target of the FMP; and minimize gear and user group conflicts resulting from possible effort shifts by fishermen displaced from other fisheries.

This year's stock assessment for Atlantic group king mackerel provided much lower estimates of the spawning potential ratio (SPR) and the acceptable biological catch (ABC) range than in previous years. Levels of SPR form the basis of the FMP definitions for ''overfished,'' ''overfishing,'' and ''OY.'' The recommended ABC range establishes the boundaries for the Council's selection of the annual TAC. The 1996 SPR estimate, which declined to 32 percent from last year's estimate of 55 percent, is above the 20 percent SPR level delineating overfished stocks but is below the 40 percent SPR level required to meet the long-term, target level OY proposed by the Council in FMP Amendment 8. The estimated 1996 range of ABC decreased to 4.4 - 6.8 million lb (1,996 - 3,084 mt) from the 1995 estimate of 7.3 - 15.5 million lb (3,311 - 7,031 mt). Accordingly, the Council recommended that the 1996–97 TAC be decreased from 7.3 to 6.8 million lb (3,311 to 3,048 mt).

If the Council's recommended TAC is approved, the resulting 1996–97 commercial quota of 2.52 million lb (1,143 mt) will be somewhat above levels harvested during the past 4 fishing years, which ranged from about 2.0 - 2.2 million lb (907 - 998 mt). Moreover, this resulting quota will be similar to catch levels during the preceding 3-year period (1989–90 through 1991–92 fishing years), which ranged from 2.5 - 2.7 million lb (1,134 - 1,225 mt). Therefore, at the expected commercial quota level of 2.52 million lb, implementation of vessel trip limits is necessary to avoid an early closure of the fishery and help ensure equitable distribution of the commercial quota among traditional fisheries.

As discussed in detail in the preamble to the proposed rule (60 FR 34785; July 3, 1996), the Council also proposed the trip limits to prevent excessive harvest of pre-spawning and spawning fish and, thus, to avoid recruitment overfishing of both Atlantic and Gulf groups of king mackerel. The trip limits should prevent excessive catches of the Atlantic group king mackerel throughout the spring/summer spawning season and of the Gulf group king mackerel during April. King mackerel harvest in April, unrestricted by daily vessel trip limits, could result in the unintentional taking of large quantities of Gulf group king mackerel when such fish are still located within the boundaries of the Atlantic group. The Council considers such catches ''double-dipping,'' (i.e., overrunning of Gulf group quotas that have already been harvested during the south Florida winter fishing season). Such overruns contribute to exceeding TAC, or the yearly OY target, and increase the risk of recruitment overfishing and of not achieving OY.

According to the Council's impact analyses, the trip limits would alter or reduce the efficiency of operations for some fishermen. For some years and areas, particularly south Florida, the trip limits would have substantially reduced some individual vessel's landings as well as the area's total catch. Nevertheless, given the estimated reduced stock size and the lower commercial quota for the 1996–97 fishing year, implementation of trip limits is necessary to prevent recruitment overfishing, to avoid disproportionate and inequitable harvest of the available quota by one user group compared to another, and to minimize the possibility of an early closure of the commercial fishery. Avoidance of such problems is consistent with National Standards 1, 3, and 4 (as discussed herein) and with the objectives of the FMP (e.g., stabilize fishery yields at maximum sustainable yield (MSY) and minimize gear and user group conflicts). For these reasons, NMFS believes that the trip limits strike a reasonable balance between achieving efficient resource utilization and promoting stability of the socioeconomic and biological characteristics of the fishery.

National Standard 2

Comment: A commenter stated that the trip limits, particularly the 1,250–lb (567–kg) commercial trip limit proposed for off Monroe County (Florida Keys), are not supported by the best available scientific information. He submitted an annotated bibliography suggesting that the trip limits are not designed to provide maximum protection for spawning king mackerel. For example, the largest trip limit is proposed for an area off the South Atlantic Bight, which he contends is a major spawning area. However, the most restrictive trip limits are proposed for south Florida in areas where the commenter suggests the contribution of spawning fish is not important. He also states that off North Carolina, king mackerel have a prolonged spawning season which peaks June through August. Therefore, he infers that few, if any, king mackerel spawn in the Florida Keys area. Finally, the commenter speculates that the proposals were not reviewed by the Council's Scientific and Statistical Committee (SSC).

Response: National Standard 2 requires conservation and management measures to be based upon the best scientific information available. The Director of NMFS' Southeast Fisheries Science Center has certified that the trip limits are based on the best available scientific information and appear risk-averse in maintaining the stock at a size level not posing risks of recruitment

overfishing. Furthermore, the trip limit proposals have been reviewed by the SSCs of both the South Atlantic and Gulf of Mexico Fishery Management Councils.

The lower trip limits are designed to prevent excessive catches and overfishing off south Florida where about half to two-thirds of the commercial quotas for the Atlantic and Gulf groups of king mackerel are taken annually. The trip limits off south Florida should protect against double-dipping of quotas already taken during the winter season and allow greater escapement for overwintering fish to migrate to summer spawning grounds. They also would preclude excessive harvest during summer spawning months.

Although larval collection surveys have provided some information on the location of king mackerel spawning grounds, the findings of the surveys are not considered conclusive because the patchy occurrence of larvae in oceanic waters has made biological sampling difficult. Therefore, information yielded from sparse larval data collections off south Florida is unlikely to be representative or an accurate indicator of the actual spawning contribution of this area. Presently, determination of this type of information is confounded by seasonal migrations, protracted spawning seasons, and inconclusive findings of stock identification genetics studies. Until further scientific information becomes available, protection of spawners by trip limits, even in areas considered as minor spawning grounds, is a conservative approach in a risk-averse management program that prevents overfishing and rebuilds stocks to long-term OY target levels. As indicated by the 1996 stock assessment, both groups of king mackerel are below SPR target levels representing the long-term OY.

National Standard 3

Comment: One commenter stated that the different trip limits do not provide uniform management for the stock throughout its range. He reasoned that if Atlantic group king mackerel is in jeopardy, fishing mortality from commercial fishing should be reduced uniformly throughout its range.

Response: National Standard 3 requires that an individual stock of fish, to the extent practicable, be managed as a unit throughout its range, and that interrelated stocks of fish be managed as a unit or in close coordination. The goal of National Standard 3 is not to manage stocks with identical measures but to manage a given stock as a unit throughout its range. Indeed, National Standard 6 requires conservation and management measures to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The comments received in opposition to the proposed rule were considered to be rigid interpretations of the national standards that do not reflect accurately the flexibility described in the Guidelines for Fishery Management Plans and the legislative history of the Magnuson Act. Consequently, NMFS has determined that the trip limits are an important part of a risk-adverse program to protect against overfishing, distribute the annual commercial quota equitably among resource users throughout the management area, preclude in-season closure and resultant negative socioeconomic impacts, rebuild the stock to long-term OY target levels, and, thus, provide the socioeconomic and conservation benefits intended by the Council.

National Standard 4

Comment: One commenter believed that the trip limit proposals were not fair and equitable to the commercial fishermen of Monroe County. He did not believe that, compared to the lower trip limits proposed for Florida's southeast and Florida Keys fisheries, the higher trip limit proposed for the northern area logically follows from the Council's projection of an additional effort shift from nearby fishermen displaced from New England fishery closures. He stated, ''Ideally, all users should bear the burden of resource conservation.''

Another commenter indicated that the trip limit proposals were unjust and unfair to Florida east coast net fishermen. He believed that the proposed trip limits would eliminate nets in favor of hook-and-line fishermen. Net fishermen, he stated, should have a share of the east coast subzone quota similar to that provided by the gillnet quota for the Florida west coast subzone.

Response: National Standard 4 requires conservation and management measures to not discriminate between residents of different states; the allocation or assignment of fishing privileges among U.S. fishermen must be fair and equitable to all affected fishermen, reasonably designed to promote conservation, and implemented in a way so as to prevent any particular individual, corporation, or other entity from acquiring an excessive share of such privileges.

NMFS believes the trip limits are consistent with National Standard 4. From the perspective of assigning fishing privileges, they would be fair and equitable, reasonably calculated to promote conservation, and carried out in such a manner that no particular entity acquires an excessive share of such privileges. Although there will be some disadvantage to more efficient fishermen (e.g., high liners or net gear users), the trip limits are necessary to achieve long-term OY targets and to maximize overall benefits from the fishery to participants throughout the management area.

In response to previous comments received, the Council increased the trip limit proposed for the Florida Keys from 50 fish to 1,250–lb (567–kg) (about 125 fish) per day. The higher limit was proposed to help offset costs of producing Atlantic group king mackerel from more distant fishing grounds and, thus, allow a more efficient and profitable operation of vessels in that area. The different trip limits in different areas of the coast may disadvantage some mackerel fishermen over others. However, the overall benefits to the entire community of resource users should offset any adverse impacts on specific fishermen. The 1,250–lb (567–kg) trip limit for the Florida Keys and the 500–lb (227–kg) trip limit for the Florida east coast should provide fair access while preventing excessive catches, early closures, and quota overruns. For these reasons, NMFS believes that the trip limits satisfy the requirements of National Standard 4 regarding fairness and equity to all fishery participants throughout the management area, while providing a rational management approach to achieve OY.

Concern about the possibilities of effort increasing from displaced fishermen entering the fishery was only one of several factors supporting the implementation of trip limits. Some protection from potential effort shifts will be provided by all the trip limits.

The comment suggesting a separate gillnet quota for Florida southeast coast fishermen is not within the scope of this action, therefore, no response is provided.

Other Comments

Comment: The Council chairman stated that, after reviewing the 1996 stock assessment and the decreased SPR estimate, the Council remains concerned about the status of Atlantic group king mackerel. In addition, he expressed concern that the TAC reduction recommended by the Council in response to the lower 1996 ABC range would result in an early closure of the 1996–97 fishing season, thereby negatively impacting states north of Florida. To avoid this potential

situation, he expressed the Council's support and request to implement the trip limits as soon as possible.

Response: During agency review of the proposed action, NMFS carefully considered these and other comments before approving the Council's regulatory amendment and issuing this implementing final rule. NMFS issued this final rule in as timely a manner as practicable consistent with the Council's stated objectives and concerns about the effects of an early fishery closure.

Changes from the Proposed Rule

Since the proposed rule was published, NMFS has consolidated most of its fishery regulations for the Southeast Region into one set of regulations at 50 CFR part 622 (61 FR 34930, July 3, 1996). Accordingly, this final rule amends the regulations for coastal migratory pelagic resources in 50 CFR part 622 in lieu of an amendment to similar regulations previously contained in part 642. Minor changes in language have been made to conform to the standards in part 622. Further, the addition, in logical order, of commercial trip limits for Atlantic group king mackerel, as contained in this final rule, requires redesignation of existing paragraphs in § 622.44(a). For convenience and ease of understanding, this final rule redesignates and reprints the existing commercial trip limits for Gulf group king mackerel contained in that paragraph without substantive change.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 34966, July 3, 1996) and are not repeated here. No comments were received in response to the proposed rule that required a change in that assessment. As a result, a regulatory flexibility analysis was not prepared.

To avoid early closure of the commercial Atlantic group king mackerel fishery and disproportionate harvest of the quota by certain user groups, it is essential that the trip limits for commercial vessels that harvest Atlantic group king mackerel from New York through southwest Florida be implemented as soon as possible. The Assistant Administrator for Fisheries, NOAA, therefore, finds that good cause exists, under 5 U.S.C. 553(d)(3), to establish an effective date of less than 30 days after the date of publication of this final rule. To provide sufficient notification of the trip limits, particularly to vessels that may be at sea, NMFS makes the final rule effective September 23, 1996.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico. Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 11, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.44, paragraph (a) is revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) *King mackerel*—(1) *Atlantic group*. (i) North of 29°25' N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(ii) In the area between 29°25' N. lat. and 28°47.8' N. lat., which is a line directly east from the Volusia/Brevard County, FL boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 500 lb (227 kg) from April 1 through October 31.

(iv) In the area between 25°20.4' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,250 lb (567 kg) from April 1 through October 31.

(2) *Gulf group*. Commercial trip limits are established in the eastern zone as follows. (See § 622.42(c)(1)(i) for specification of the eastern zone and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(i) *Florida east coast subzone*. In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From November 1, each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day.

(B) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 25 king mackerel per day. However, if 75 percent of the subzone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the subzone's quota is filled or until March 31, whichever occurs first.

(ii) *Florida west coast subzone*—(A) *Gillnet gear*. (*1*) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(*2*) In the Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement.

(*ii*) King mackerel from the west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*ii*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear*. In the Florida west coast subzone, king mackerel in or

from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king and Spanish mackerel, as required by § 622.4(a)(2)(iv), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(*2*)(*i*):

(*1*) From July 1, each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day.

(*2*) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected under § 622.43(a)—in amounts not exceeding 50 king mackerel per day.

(iii) *Notice of trip limit changes.* The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section when the requisite harvest level has been reached or is projected to be reached.

* * * * *

[FR Doc. 96–23769 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 090696B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures from the U.S.-Canadian Border to Cape Alava, WA, and from the Queets River to Leadbetter Point, WA

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

ACTION: Closures.

SUMMARY: NMFS announces that recreational salmon fisheries were closed in the following areas: From the U.S.-Canadian border to Cape Alava, WA (48°10′00″ N. lat.), at 2400 hours local time (l.t.), August 31, 1996; and from the Queets River (47°31′42″ N. lat.) to Leadbetter Point, WA (46°38′10″ N. lat.), at 2400 hours l.t., September 5, 1996. The areas will remain closed under the terms of the preseason announcement of the 1996 management measures. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational quotas of 6,400 coho salmon and 23,000 coho salmon for the respective areas have been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of coho salmon.

DATES: Closure from the U.S.-Canadian border to Cape Alava, WA, is effective at 2400 hours l.t., August 31, 1996, through 2400 hours l.t., September 26, 1996. Closure from the Queets River to Leadbetter Point, WA, is effective at 2400 hours l.t., September 5, 1996, through 2400 hours l.t., September 26, 1996. Comments will be accepted through October 1, 1996.

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

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

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

By inseason management action (61 FR 40157, August 1, 1996), NMFS announced that the contingency seasons north of Cape Falcon, OR, would open as stated in the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996). The 1996 recreational fishery in the area between the U.S.-Canadian border and Cape Alava, WA, would open on August 5, and the 1996 recreational fishery in the area between the Queets River and Leadbetter Point, WA, would open on July 22. Each fishery would continue through September 26 or attainment of their respective quotas of 6,400 and 23,000 coho salmon (revised at 61 FR 43472, August 23, 1996), whichever occurred first.

The best available information on August 29 indicated that catch and effort data and projections supported closure of the recreational fishery in the area between the U.S.-Canadian border and Cape Alava, WA, at 2400 hours l.t., August 31, and closure of the recreational fishery in the area between the Queets River and Leadbetter Point, WA, at 2400 hours l.t., September 5.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife regarding these closures. The State of Washington will manage the recreational fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours l.t., August 31, 1996 (closure from the U.S.-Canadian border to Cape Alava, WA) and 2400 hours l.t., September 5, 1996 (closure from the Queets River to Leadbetter Point, WA) by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this announcement to be issued without affording a prior opportunity for public comment. This announcement does not apply to other fisheries that may be operating in other areas.

Classification

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

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

Dated: September 11, 1996.

Richard W. Surdi,

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

[FR Doc. 96–23771 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 090696C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments from the U.S.-Canadian Border to the Queets River, WA

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

ACTION: Inseason adjustments.

SUMMARY: NMFS announces the transfer of 300 coho salmon from the recreational fishery in the subarea between Cape Alava and the Queets River, WA, to the recreational fishery in the subarea between the U.S.-Canadian

border and Cape Alava, WA. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational quotas should be revised to 1,400 coho salmon and 6,700 coho salmon for the respective subareas. This action is intended to help meet the recreational season duration objectives for each subarea.

DATES: Effective September 16, 1996, through 2400 hours local time, September 26, 1996. Comments will be accepted through October 1, 1996.

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

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

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that coho salmon may be transferred among recreational subareas north of Cape Falcon, OR, to help meet the recreational season duration objectives for each subarea. Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

By inseason management action (61 FR 40157, August 1, 1996), NMFS announced that the contingency seasons north of Cape Falcon, OR, would open as stated in the annual management measures. The 1996 recreational fishery in the subareas between the U.S.-Canadian border and Cape Alava, WA, and between Cape Alava and the Queets River, WA, opened on August 5. Each fishery was scheduled to continue through September 26 or attainment of their respective quotas of 6,400 and 1,700 coho salmon (revised at 61 FR 43472, August 23, 1996), whichever occurred first.

The fishery between the U.S.-Canadian border and Cape Alava closed on August 31 upon the projected attainment of its quota, published elsewhere in this issue. The best available information on September 3 indicated that 6,692 coho salmon were caught in this fishery, so the quota was exceeded by 292 coho salmon. After conferring with representatives of the affected ports, NMFS agreed to transfer 300 coho salmon to this fishery from the recreational fishery between Cape Alava and the Queets River to cover the quota overage. Therefore, the quota for the subarea between the U.S.-Canadian border and Cape Alava is increased to 6,700 coho salmon, and the quota for the subarea between Cape Alava and the Queets River is decreased to 1,400 coho salmon. Even with the smaller quota, the fishery between Cape Alava and the Queets River is expected to continue for the duration of its scheduled season.

Modification of quotas is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions that apply to these fisheries remain in effect as announced in the annual management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fish and Wildlife, and the Oregon Department of Fish and Wildlife regarding this adjustment. The State of Washington will manage the recreational fisheries in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. Because of the need for immediate action to manage the fisheries under the revised quotas, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

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

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

Dated: September 11, 1996.

Richard W. Surdi,

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

[FR Doc. 96–23772 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 662

[Docket No. 960903241–6241–01; I.D. 081996B]

Northern Anchovy Fishery; Quotas for the 1996–97 Fishing Year

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

ACTION: Final quotas.

SUMMARY: NMFS announces the estimated spawning biomass and final harvest quotas for the northern anchovy fishery in the exclusive economic zone south of Point Reyes, CA, for the 1996–97 fishing season. These quotas may only be adjusted if inaccurate data were used or if errors were made in the calculations. Comments on these two points are invited. The intended effect of this action is to establish allowable harvest levels of Pacific anchovy.

DATES: Effective on August 1, 1996. Comments will be accepted until October 15, 1996.

ADDRESSES: Submit comments on the final quotas to Ms. Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Administrative Report LJ–95–11 is available from this same address.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan, Southwest Region, NMFS, (310) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Science Center, the Director of the Southwest Region, NMFS, has decided to use the 1995 estimate of 388,000 mt spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, to set harvest limits for the 1996–97 fishing season. This is the same biomass estimate that was used for the 1995–96 fishing season because no new estimate has been made.

On March 26, 1996, a proposed rule was published in the Federal Register (61 FR 13148), recommending that Federal regulations implementing the Northern Anchovy Fishery Management Plan (FMP) be removed. This proposal was based on the fact that harvests of anchovy have declined greatly since 1982, and that this situation is unlikely to change in the foreseeable future. Interjurisdictional and allocation issues that might require Federal intervention no longer exist. Removing Federal regulations would mean that the anchovy fishery would continue to be regulated by the State of California. Since no final action has yet been taken on this proposed rule, Federal regulation of the fishery is still effective, and a quota must be set for the 1996 fishing season, which begins on August 1 under the regulations.

The biomass estimate was derived from a stock assessment model using spawning biomass estimated by five indices of abundance. Documentation of the spawning biomass is contained in Administrative Report LJ–95–11, published by the Southwest Fisheries Science Center, NMFS (see **ADDRESSES**). This report and the determination of harvest quotas were provided to the Pacific Fishery Management Council (Council) last year, and a meeting of the Council's Coastal Pelagics Planning Team and Advisory Subpanel was held in Long Beach, CA, on June 21, 1995. At that time, NMFS requested estimates of

domestic processing needs from the fishing industry so that a basis could be established for setting annual quotas. Additional information was received at the June 26–29, 1995, meeting of the Council. The result of these meetings was the thorough review of the 1995 estimate of the spawning biomass, which is the purpose of the meetings as stated in 50 CFR 662.20(a)(1). There is no new information to support a change from the assessment made in 1995. No stock assessment was conducted in 1996. With the information available, a modest harvest based on last year's estimate of the spawning biomass and on the needs of the U.S. fishery as expressed by the industry is reasonable.

According to the formula in the FMP, the optimum yield (OY) is 61,600 mt (70 percent of the biomass above 300,000), which is allocated to reduction fisheries, plus 4,900 mt for non-reduction fisheries. There is no agreement with Mexico on the management of northern anchovy; a portion of the biomass (30 percent) above 300,000 mt is designated as the amount to account for this unregulated harvest. Any portion of the OY not used by U.S. fishermen is identified as total allowable level of foreign fishing (TALFF) and is available to foreign fishing.

The estimates of the amount of anchovy that will be used by the U.S. fishing industry is based, usually, on the largest amount of reduction and non-reduction processing in the previous 3 years; however, the spawning biomass has been below 300,000 mt for 3 of the last 4 years and no fishery was allowed. There was no reduction harvest in 1995.

The TALFF depends on that portion of the OY that will not be used by U.S. fishermen, minus the amount of harvest by Mexican vessels that is in excess of the average Mexican harvest (calculated according to the formula in the FMP). The estimate of Mexican excess harvest is based, generally, on the largest harvest in the last 3 years; however, the biomass has been so low during this time that there has been no significant fishery off Mexico until last year, and there was no excess Mexican harvest last year as defined in the FMP. Historically, the Mexican fishery has been based on availability and not on abundance. Recent harvests are not a reliable predictor of Mexican harvest under conditions of sudden increased abundance.

After considering the above, the Regional Director has made the following determinations for the 1996–97 fishing season by applying the formulas in the FMP and in 50 CFR 662.20.

1. The total OY for northern anchovy is 66,500 mt, plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 13,000 mt.

a. Of the total reduction harvest quota, 1,300 mt is reserved for the reduction fishery in Subarea A (north of Pt. Buchon). The FMP requires that 10 percent of the U.S. reduction quota or 9,072 mt, whichever is less, be reserved for the northern fishery. This is not a special quota, but only a reduction in the amount allocated to the southern fishery south of Pt. Buchon (Subarea B). After the northern fishery has harvested 1,300 mt, any unused portion of the Subarea B allocation may also be harvested north of Pt. Buchon.

b. The reduction quota for Subarea B (south of Pt. Buchon) is 11,700 mt.

3. The U.S. harvest quota for non-reduction fishing (i.e., fishing for anchovy for use as dead bait or human consumption) is 4,900 mt (as set by § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 13,000 mt.

6. The amount allocated to joint venture processing (JVP) is zero, because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 13,000 mt. DAH is the sum of DAP and JVP.

8. The TALFF is 48,600 mt.

The fishery will be monitored during the year and evaluated with respect to the OY and the estimated needs of the fishing industry. Adjustments may be made to comply with the requirements of the FMP and its implementing regulations.

This action is authorized by 50 CFR part 662 and is exempt from review under E.O. 12866.

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

Dated: September 11, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23770 Filed 9–12–96; 12:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 181
Tuesday, September 17, 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.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1312

RIN 0348–AB34

Classification, Downgrading, Declassification and Safeguarding of National Security Information

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed rule.

SUMMARY: The Office of Management and Budget (OMB) seeks public comment on a proposed rule that would set forth the procedures to be followed by OMB staff regarding the classification, downgrading, declassification and safeguarding of national security information. In addition, this information lists OMB staff who are authorized to originally classify information at the top secret and secret level. These regulations also contain guidance on the procedures to be used by OMB when other government agencies and the public request that classified information in OMB files be reviewed for possible declassification and release. If such information may not be released these procedures also provide guidance on how to appeal such an action.

DATES: Comments must be received no later than November 18, 1996.

ADDRESSES: Comments on the proposed rule should be addressed to: Darrell A. Johnson, Deputy Assistant Director for Administration, Office of Management and Budget, Room 9026, New Executive Office Building, Washington, D.C. 20503. Comments up to three pages in length may be submitted via facsimile to (202) 395–3504. Electronic mail comments may be submitted via Internet to SECREG@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Darrell A. Johnson, Deputy Assistant Director for Administration, Office of Management and Budget, at (202) 395–5715.

SUPPLEMENTARY INFORMATION: OMB is revising its regulations concerning the classification, downgrading, declassification and safeguarding of national security information. This revision is necessary to ensure conformity with guidelines in Executive Order 12958, April 20, 1995 and its implementing directives. The Office of Management and Budget is repealing its existing Part 1312 and replacing it with the new Part 1312.

Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Executive Orders 12866 and 12875

For purposes of the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.), the proposed rule will not, if promulgated, have a significant economic effect on a substantial number of small entities; the proposed rule addresses only the procedures to be followed in the production or disclosure of OMB materials and information in litigation. For purposes of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4), as well as Executive Orders No. 12866 and 12875, the proposed rule would not significantly or uniquely affect small governments, and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more.

Issued in Washington, D.C., September 11, 1996.

Jacob J. Lew,

Acting Director.

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR Chapter III by revising Part 1312 to read as follows:

PART 1312—CLASSIFICATION, DOWNGRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Subpart A—Classification and Declassification of National Security Information

Sec.
1312.1 Purpose and authority.
1312.2 Responsibilities.
1312.3 Classification requirements.
1312.4 Classified designations.
1312.5 Authority to classify
1312.6 Duration of classification.
1312.7 Derivative classification.
1312.8 Standard identification and markings.
1312.9 Downgrading and declassification.
1312.10 Systematic review guidelines.
1312.11 Challenges to classifications.
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Subpart B—Control and Accountability of Classified Information

1312.21 Purpose and authority.
1312.22 Responsibilities.
1312.23 Access to classified information.
1312.24 Access by historical researchers and former Presidential appointees.
1312.25 Storage.
1312.26 Control of secret and confidential material.
1312.27 Top secret control.
1312.28 Transmission of classified material.
1312.29 Destruction.
1312.30 Loss or possible compromise.
1312.31 Security violations.

Subpart C—Mandatory Declassification Review

1312.32 Purpose and authority.
1312.33 Responsibility.
1312.34 Information in the custody of OMB.
1312.35 Information classified by another agency.
1312.36 Appeal procedure.
1312.37 Fees.

Authority: Executive Order 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

Subpart A—Classification and Declassification of National Security Information

§ 1312.1 Purpose and authority.

This subpart sets forth the procedures for the classification and declassification of national security information in the possession of the Office of Management and Budget. It is issued under the authority of Executive Order 12958, April 20, 1995, Information Security Oversight Office Directive No 1, (60 FR 53492, October 13, 1995), and is applicable to all OMB employees.

§ 1312.2 Responsibilities.

The effectiveness of the classification and declassification program in OMB depends entirely on the amount of attention paid to it by supervisors and their staffs in those offices and divisions that possess or produce classified material. Officials who originate classified information are responsible

for proper assignment of a classification to that material and for the decision as to its declassification. Officials who produce documents containing classified information must determine the source of the classification for that information and must ensure that the proper identity of that source is shown on the document. Custodians of classified material are responsible for its safekeeping and for ensuring that such material is adequately marked as to current classification. Custodians are also responsible for the control of and accounting for all classified material within their area of jurisdiction as prescribed in OMB Manual Section 1030.

(a) EOP Security Officer. In cooperation with the Associate Director for Administration, the EOP Security Officer supervises the administration of this section and develops programs to assist in the compliance with the Order. Specifically, he:

(1) Promotes the correct understanding of this section by all employees by providing annual security refresher briefings and ensures that new employees attend initial briefings about overall security procedures and policies.

(2) Issues and keeps current such classification guides and guidelines for review for declassification as are required by the Order.

(3) Conducts periodic reviews of classified documents produced and provides assistance and guidance where necessary.

(4) Maintains and publishes a current listing of all officials who have been designated in writing to have Top Secret, Secret, and Confidential original classification authority.

(b) Heads of divisions or offices. The head of each division or major organizational unit is responsible for the administration of this section within his or her area. Appropriate internal guidance should be issued to cover special or unusual conditions within an office.

§ 1312.3 Classification requirements.

United States citizens must be kept informed about the activities of their Government. However, in the interest of national security, certain official information must be subject to constraints on its dissemination or release. This information is classified in order to provide that protection.

(a) Information shall be considered for classification if it concerns:

(1) military plans, weapons systems, or operations;

(2) foreign government information;

(3) intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(4) foreign relations or foreign activities of the United States, including confidential sources;

(5) scientific, technological, or economic matters relating to the national security;

(6) United States Government programs for safeguarding nuclear materials or facilities; or

(7) vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

(b) When information is determined to meet one or more of the criteria in paragraph (a) of this section, it shall be classified by an original classification authority when he/she determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

(c) Unauthorized disclosure of foreign government information, including the identity of a confidential foreign source of intelligence sources or methods, is presumed to cause damage to the national security.

(d) Information classified in accordance with this section shall not be declassified automatically as a result of any unofficial or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information.

§ 1312.4 Classified designations.

(a) Except as provided by the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947, as amended, the Executive Order 12958 provides the only basis for classifying information. Information which meets the test for classification may be classified in one of the following three designations:

(1) Top Secret. This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(2) Secret. This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(3) Confidential. This classification shall be applied only to information the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.

(b) If there is significant doubt about the need to classify information it shall not be classified. If there is significant doubt about the appropriate level of classification it shall be classified at the lower level.

§ 1312.5 Authority to classify.

(a) The authority to originally classify information or material under these regulations shall be limited to those officials concerned with matters of national security. The officials listed below are granted authority by the Director, OMB, to assign original classifications as indicated to information or material that is originated by OMB staff and relating to the national security of the United States:

(1) Top Secret and below:

(i) Deputy Director.

(ii) Deputy Director for Management.

(iii) Associate Director for National Security and International Affairs.

(iv) Associate Director for Natural Resources, Energy and Science.

(2) Secret and below:

(i) Deputy Associate Director for National Security.

(ii) Deputy Associate Director for International Affairs.

(iii) Deputy Associate Director for Energy and Science.

(b) Classification authority is not delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or from a classification guide.

§ 1312.6 Duration of classification.

(a) When determining the duration of classification for information originally classified under Executive Order 12958, an original classification authority shall follow the following sequence:

(1) He/She shall attempt to determine a date or event that is less than 10 years from the date of original classification, and which coincides with the lapse of the information's national security sensitivity, and shall assign such date or event as the declassification instruction;

(2) If unable to determine a date or event of less than 10 years, he/she shall ordinarily assign a declassification date that is 10 years from the date of the original classification decision;

(3) He/She may extend the duration of classification or reclassify specific information for a period not to exceed 10 additional years if such action is consistent with the exemptions as outlined in Section 1.6(d) of the Executive Order. This provision does

not apply to information contained in records that are more than 25 years old and have been determined to have permanent historical value under Title 44 United States Code.

(4) May exempt from declassification within 10 years specific information, which is consistent with the exemptions as outlined in Section 1.6 (d) of the Executive Order.

Extending Duration of Classification. Extensions of classification is not automatic. If an original classification authority with jurisdiction over the information does not extend the classification of information assigned a date or event for declassification, the information is automatically declassified upon the occurrence of the date or event. If an original classification authority has assigned a date or event for declassification that is 10 years or less from the date of classification, an original classification authority with jurisdiction over the information may extend the classification duration of such information for additional periods not to exceed 10 years at a time. Records determined to be of historical value may not exceed the duration of 25 years.

(b) When extending the duration of classification, the original classification authority must:

(1) Be an original classification authority with jurisdiction over the information.

(2) Ensure that the information continues to meet the standards for classification under the Executive Order.

(3) Make reasonable attempts to notify all known holders of the information. Information classified under prior orders marked with a specific date or event for declassification is automatically declassified upon that date or event. Information classified under prior orders marked with Originating Agency's Determination Required (OADR) shall:

(i) Be declassified by a declassification authority as defined in Section 3.1 of the Order.

(ii) Be re-marked by an authorized original classification authority with jurisdiction over the information to establish a duration of classification consistent with the Order.

(iii) Be subject to Section 3.4 of the Order if the records are determined to be of historical value and are to remain classified for 25 years from the date of its original classification.

§ 1312.7 Derivative classification.

A ''derivative classification'' means that the information is in substance the same information that is currently classified, usually by another agency or classification authority. The application of derivative classification markings is the responsibility of the person who incorporates, restates, paraphrases, or generates in new form information that is already classified, or one who applies such classification markings in accordance with instructions from an authorized classifier or classification guide. Extreme care must be taken to continue classification and declassification markings when such information is incorporated into OMB documents. The duplication or reproduction of existing classified information is not derivative classification. Persons who use derivative classification need not possess original classification authority.

§ 1312.8 Standard identification and markings.

(a) Original Classification. At the time classified material is produced, the classifier shall apply the following markings on the face of each originally classified document, including electronic media:

(1) Classification Authority. The name/personal identifier, and position title of the original classifier shall appear on the ''Classified By'' line.

(2) Agency and Office of Origin. If not otherwise evident, the agency and office of origin shall be identified and placed below the name on the ''Classified By'' line.

(3) Reasons for Classification. Identify the reason(s) to classify. The classifier shall include, at a minimum, a brief reference to the pertinent classification category(ies), or the number 1.5 plus the letter(s) that corresponds to that classification category in Section 1.5 of the Order.

(4) Declassification instructions. These instructions shall indicate the following:

(i) The duration of the original classification decision shall be placed on the ''Declassify On'' line.

(ii) The date or event for declassification that corresponds to the lapse of the information's national security sensitivity, which may not exceed 10 years from the date of the original decision.

(iii) When a specific date or event within 10 years cannot be established, the classifier will apply the date that is 10 years from the date of the original decision.

(iv) The exemption category from declassification. Upon determination that the information must remain classified beyond 10 years, the classifier will apply the letter ''X'' plus a brief recitation of the exemption category(ies), or the letter ''X'' plus the number that corresponds to the exemption category(ies) in Section 1.6(d) of the Order.

(v) An original classification authority may extend the duration of classification for successive periods not to exceed 10 years at a time. The ''Declassify On'' line shall be revised to include the new declassification instructions and shall include the identity of the person authorizing the extension and the date of the action.

(vi) Information exempted from automatic declassification at 25 years should on the ''Declassify On'' line be revised to include the symbol ''25X'' plus a brief reference to the pertinent exemption categories/numbers of the Executive Order.

(5) The overall classification of the document is the highest level of information in the document and will be conspicuously placed stamped at the top and bottom of the outside front and back cover, on the title page, and on the first page.

(6) The highest classification of individual pages will be stamped at the top and bottom of each page, to include ''unclassified'' when it is applicable.

(7) The classification of individual portions of the document, (ordinarily a paragraph, but including subjects, titles, graphics) shall be marked by using the abbreviations (TS), (S), (C), or (U), will be typed or marked at the beginning or end of each paragraph or section of the document. If all portions of the document are classified at the same level, this may be indicated by a statement to that effect.

(b) Derivative Classification. Information classified derivatively on the basis of source documents shall carry the following markings on those documents:

(1) The derivative classifier shall concisely identify the source document(s) or the classification guide on the ''Derived From'' line, including the agency and where available the office of origin and the date of the source or guide. When a document is classified derivatively on the basis of more than one source document or classification guide, the ''Derived From'' line shall appear as ''Derived From: Multiple Sources''.

(2) The derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. Where practicable the copies of the document should also have this list attached.

(3) A document derivatively classified on the basis of a source document that is itself marked ''Multiple Sources''

shall cite the source document on its ''Derived From'' line rather than the term ''Multiple Sources''.

(4) The reason for the original classification decision, as reflected in the source document, is not required to be transferred in a derivative classification action.

(5) Declassification instructions shall carry forward the instructions on the ''Declassify On'' line from the source document to the derivation document or the duration instruction from the classification guide. Where there are multiple sources, the longest duration of any of its sources shall be used.

(6) When a source document or classification guide contains the declassification instruction ''Originating Agency's Determination Required'' (OADR) the derivative document shall carry forward the fact that the source document(s) were so marked and the date of origin of the most recent source document(s).

(7) The derivatively classified document shall be conspicuously marked with the highest level of classification of information.

(8) Each portion of a derivatively classified document shall be marked in accordance with its source.

(9) Each office shall, consistent with Section 3.8 of the order, establish and maintain a database of information that has been declassified.

(c) Additional Requirements. (1) Markings other than ''Top Secret'', ''Secret'', and ''Confidential'' shall not be used to identify classified national security information.

(2) Transmittal documents will be stamped to indicate the highest classification of the information transmitted, and shall indicate conspicuously on its face the following or something similar ''Unclassified When classified Enclosure Removed'' to indicate the classification of the transmittal document standing alone.

(3) The classification data for material other than documents will be affixed by tagging, stamping, recording, or other means to insure that recipients are aware of the requirements for the protection of the material.

(4) Documents containing foreign government information shall include the markings ''This Document Contains (country of origin) Information'' * * * If the identity of the specific government must be concealed, the document shall be marked ''This Document Contains Foreign Government Information,'' and pertinent portions marked ''FGI'' together with the classification level, e.g., ''(FGI–C)''. In such cases, separate document identifying the government shall be maintained in order to facilitate future declassification actions.

(5) Documents, regardless of medium, which are expected to be revised prior to the preparation of a finished product—working papers—shall be dated when created, marked with highest classification, protected at that level, and destroyed when no longer needed. When any of the following conditions exist, the working papers shall be controlled and marked in the same manner as prescribed for a finished classified document:

(i) Released by the originator outside the originating activity;

(ii) Retained more than 180 days from the date of origin;

(iii) Filed permanently.

(6) Information contained in unmarked records, or Presidential or related materials, and which pertain to the national defense or foreign relations of the U.S. and has been maintained and protected as classified information under prior orders shall continue to be treated as classified information under this Order and is subject to its provisions regarding declassification.

§ 1312.9 Downgrading and declassification.

Classified information originated by OMB offices will be downgraded or declassified as soon as it no longer qualifies for continued protection under the provisions of the classification guides. Authority to downgrade or declassify OMB-originated information is granted to those authorized to classify (See § 1312.5). Additionally, the Associate Director for Administration is authorized to exercise downgrading and declassification actions up to and including the Top Secret level.

(a) Transferred material. Information which was originated by an agency that no longer exists, or that was received by OMB in conjunction with a transfer of functions, is deemed to be OMB-originated material. Information which has been transferred to another agency for storage purposes remains the responsibility of OMB.

(b) Periodic review of classified material. Each office possessing classified material will review that material on an annual basis or in conjunction with the transfer of files to non-current record storage and take action to downgrade or declassify all material no longer qualifying for continued protection at that level. All material transferred to non-current record storage must be properly marked with correct downgrade and declassification instructions.

§ 1312.10 Systematic review guidelines.

The EOP Security Officer will prepare and keep current such guidelines as are required by Executive Order 12958 for the downgrading and declassification of OMB material that is in the custody of the Archivist of the United States.

§ 1312.11 Challenges to classifications.

OMB employees are encouraged to familiarize themselves with the provisions of Executive Order 12958, April 20, 1995 and with OMB Manual Sections 1010, 1020, and 1030. Employees are also encouraged to question or to challenge those classifications they believe to be improper, unnecessary, or for an inappropriate time. Such questions or challenges may be addressed to the originator of the classification, unless the challenger desires to remain anonymous, in which case the question may be directed to the EOP Security Officer.

§ 1312.12 Security Program Review Committee.

The Associate Director for Administration will chair the OMB Security Program Review Committee, which will act on suggestions and complaints about the OMB security program.

Subpart B—Control and Accountability of Classified Information

§ 1312.21 Purpose and authority.

This subpart sets forth procedures for the receipt, storage, accountability, and transmission of classified information at the Office of Management and Budget. It is published under the authority of Executive Order 12958, April 20, 1995 as implemented by Directive No. 1, Information Security Oversight Office (60 FR 53492, October 13, 1995), and is applicable to all OMB employees.

§ 1312.22 Responsibilities.

The effective direction by supervisors and the alert performance of duty by employees will do much to ensure the adequate security of classified information in the possession of OMB offices. Each employee has a responsibility to protect and account for all classified information that he/she knows of within his/her area of responsibility.

Such information will be made available only to those persons who have an official need to know and who have been granted the appropriate security clearance. Particular care must be taken not to discuss classified information over unprotected communications circuits (to include intercom and closed-circuit TV), at non-

official functions, or at any time that it might be revealed to unauthorized persons. Classified information may only be entered into computer systems meeting the appropriate security criteria.

(a) EOP Security Officer. In cooperation with the Associate Director for Administration, the EOP Security Officer supervises the administration of this section. Specifically, he/she:

(1) Promotes the correct understanding of this section and insures that initial and annual briefings about security procedures are given to all new employees.

(2) Provides for periodic inspections of office areas and reviews of produced documents to ensure full compliance with OMB regulations and procedures.

(3) Takes prompt action to investigate alleged violations of security, and recommends appropriate administrative action with respect to violators.

(4) Supervises the annual inventories of Top Secret material.

(5) Ensures that containers used to store classified material meet the appropriate security standards and that combinations to security containers are changed as required.

(b) Heads of Offices. The head of each division or office is responsible for the administration of this section in his/her area. These responsibilities include:

(1) The appointment of accountability control clerks as prescribed in Part 1312.26 below.

(2) The maintenance of the prescribed control and accountability records for classified information within the office.

(3) Establishing internal procedures to ensure that classified material is properly safeguarded at all times.

§ 1312.23 Access to classified information.

Classified information may be made available to a person only when the possessor of the information establishes that the person has a valid ''need to know'' and the access is essential to the accomplishment of official government duties. The proposed recipient is eligible to receive classified information only after he/she has been granted a security clearance by the EOP Security Officer. Cover sheets will be used to protect classified documents from inadvertent disclosure while in use. An SF–703 will be used for Top Secret material; an SF–704 for Secret material, and an SF–705 for Confidential material. The cover sheet should be removed prior to placing the document in the files.

§ 1312.24 Access by historical researchers and former Presidential appointees.

(a) The requirements of Section 4.2(a)(3) of Executive Order 12958 may be waived for persons who are engaged in historical research projects, or who previously have occupied policy-making positions to which they were appointed by the President.

Waivers may be granted only if the Associate Director for Administration, in cooperation with the EOP Security Officer:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with the order; and

(3) Limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed, or received while serving as a Presidential appointee.

(b) In the instances described in paragraph (a) of this section, the Associate Director for Administration, in cooperation with the EOP Security Officer, will make a determination as to the trustworthiness of the requestor and will obtain written agreement from the requestor to safeguard the information to which access is given. He/She will also obtain written consent to the review by OMB of notes and manuscripts for the purpose of determining that no classified information is contained therein. Upon the completion of these steps, the material to be researched will be reviewed by the division/office of primary interest to ensure that access is granted only to material over which OMB has classification jurisdiction.

§ 1312.25 Storage.

All classified material in the possession of OMB will be stored in GSA-approved, steel safes possessing three-position, dial-type, changeable combination locks, or in vault-type rooms approved for Top Secret storage. Under the direction of the EOP Security Officer, combinations to safes used in the storage of classified material will be changed when the equipment is placed in use, whenever a person knowing the combination no longer requires access to it, whenever the combination has been subjected to possible compromise, whenever the equipment is taken out of service, or at least once a year. Knowledge of combinations will be limited to the minimum number of persons necessary, and records of combinations will be assigned a classification no lower than the highest level of classified information stored in the equipment concerned. An SF–700, Security Container Information, will be used in recording safe combinations. Standard Form-702, Security Container check sheet, will be posted to each safe and will be used to record opening, closing, and checking the container whenever it is used.

§ 1312.26 Control of secret and confidential material.

Classified material will be accounted for by the office having custody of the material. OMB For 87, Classified Document Control, will be used to establish accountability controls on all Secret material received or produced within OMB offices. No accountability controls are prescribed for Confidential material, but offices desiring to control and account for such material should use the procedures applicable to Secret material. Information classified by another agency shall not be disclosed without that agency's authorization.

(a) Accountability Control Clerks. Each division or office head will appoint one person as the Accountability Control Clerk (ACC). The ACC will be the focal point for the receipt, routing, accountability, dispatch, and declassification downgrading or destruction of all classified material in the possession of the office.

(b) OMB Form 87. One copy of OMB Form 87 will be attached to the document, and one copy retained in the accountability control file for each active document within the area of responsibility of the ACC. Downgrading or destruction actions, or, other actions removing the document from the responsibility of the ACC will be recorded on the OMB Form 87, and the form filed in an inactive file. Inactive control forms will be cut off annually, held for two additional years, then destroyed.

(c) Working Papers and Drafts. Working papers and drafts of classified documents will be protected according to their security classification, but will not be subject to accountability control unless they are forwarded outside of OMB.

(d) Typewriter Ribbons. Typewriter ribbons, cassettes, and other devices used in the production of classified material will be removed from the machine after each use and protected as classified material not subject to controls. Destruction of such materials will be as prescribed in Part 1312.29 below.

(e) Reproduction. Classified material will be reproduced only as required unless prohibited by the originator for the conduct of business and reproduced copies are subject to the same controls as are the original documents. Top

Secret material will be reproduced only with the written permission of the originating agency.

§ 1312.27 Top secret control.

The EOP Security Officer serves as the Top Secret Control Officer (TSCO) for OMB. He will be assisted by the Alternate TSCOs in each division/office Holding Top Secret material. The ATSCOs will be responsible for the accountability and custodianship of Top Secret material within their divisions/offices. The provisions of this section do not apply to special intelligence material, which will be processed as prescribed by the controlling agency.

(a) Procedures. All Top Secret material produced or received in OMB will be taken to the appropriate ATSCO for receipting, establishment of custodianship, issuance to the appropriate action officer, and, as appropriate, obtaining a receipt. Top Secret material in the custody of the TSCO or ATSCO will normally be segregated from other classified material and will be stored in a safe under his or her control. Such material will be returned to the appropriate ATSCO by action officers as soon as action is completed. OMB Form 87 will be used to establish custody, record distribution, routing, receipting and destruction of Top Secret material. Top Secret Access Record and Cover Sheet (Standard Form 703) will be attached to each Top Secret document while it is in the possession of OMB.

(b) Inventory. The Associate Director for Administration will notify each appropriate OMB office to conduct an inventory of its Top Secret material by May 1 each year. The head of each office will notify the EOP Security Officer when the inventory has been satisfactorily completed. Each Top Secret item will be examined to determine whether it can be downgraded or declassified, and the inventory will be adjusted accordingly. Discrepancies in the inventory, indicating loss or possible compromise, will be thoroughly investigated by the EOP Security Officer or by the Federal Bureau of Investigation, as appropriate. Each ATSCO will retain his/her division's inventory in accordance with the security procedures set forth herein.

§ 1312.28 Transmission of classified material.

Prior to the transmission of classified material to offices outside OMB, such material will be enclosed in opaque inner and outer covers or envelopes. The inner cover will be sealed and marked with the classification, and the address of the sender and of the addressee. The receipt for the document, OMB Form 87, (not required for Confidential material) will be attached to or placed within the inner envelope to be signed by the recipient and returned to the sender. Receipts will identify the sender, the addressee, and the document, and will contain no classified information. The outer cover or envelope will be sealed and addressed with no identification of its contents.

(a) Transmittal of Top Secret Material. The transmittal of Top Secret material shall be by personnel specifically designated by the EOP Security Officer, or by Department of State diplomatic pouch, by a messenger-courier system specifically created for that purpose. Alternatively, it shall be taken to the White House Situation Room for transmission over secure communications circuits.

(b) Transmittal of Secret Material. The transmittal of Secret material shall be as follows:

(1) Within and between the fifty States, the District of Columbia, and Puerto Rico: Use one of the authorized means for Top Secret material, or transmit by U.S. Postal Service express or registered mail.

(2) Other Areas. Use the same means authorized for Top Secret, or transmit by U.S. registered mail through Military Postal Service facilities.

(c) Transmittal of Confidential Material. As identified above, or transmit by U.S. Postal Service Certified, first class, or express mail service within and between the fifty States, the District of Columbia, and Puerto Rico.

(d) Transmittal Between OMB Offices and Within the EOP Complex. Classified material will normally be hand carried within and between offices in the Executive Office of the President complex by cleared OMB employees. Documents so carried must be protected by the appropriate cover sheet or outer envelope. Top Secret material will always be hand carried in this manner. Secret and Confidential material may be transmitted between offices in the EOP complex by preparing the material as indicated above (double envelope) and forwarding it by special messenger service provided by the messenger center. The messenger shall be advised that the material is classified. Receipts shall be obtained if Top Secret or Secret material is being transmitted outside of OMB. Classified material will never be transmitted in the Standard Messenger Envelope (SF Form 65), or by the Mail Stop system.

§ 1312.29 Destruction.

The destruction of classified material will be accomplished under the direction of the TSCO or the appropriate ATSCO, who will assure that proper accountability records are kept. Classified official record material will be processed to the OA Records Management Branch, NEOB Room 5208, in accordance with OMB Manual Section 540. Classified nonrecord material will be destroyed as soon as it becomes excess to the needs of the office. The following destruction methods are authorized:

(a) Shredding. Using the equipment approved for that purpose within OMB offices. Shredders will not accommodate typewriter ribbons or cassettes. Shredding is the only authorized means of Destroying Top Secret material.

(b) Burn Bag. Classified documents, cassettes, ribbons, and other materials at the Secret level or below, not suitable for shredding, may be destroyed by using burn bags, which can be obtained from the supply store. They will be disposed of as follows:

(1) OEOB: Unless on an approved list for pick-up of burn bags, all other burn bags should be delivered to Room 096 OEOB between 8:00 a.m. and 4:30 p.m. Burn bags are not to be left in hallways.

(2) NEOB: Hours for delivery of burn bag materials to the NEOB Loading Dock Shredder Room are Monday through Friday from 8:00 a.m. to 9:30 a.m.; 10:00 a.m. to 11:00 a.m.; 11:45 a.m. to 1:30 p.m. and 2:00 p.m. to 3:30 p.m. The phone number of the Shredder Room is 395–1593. In the event the Shredder Room is not manned, do not leave burn bags outside the Shredder Room as the security of that material may be compromised.

(3) Responsibility for the security of the burn bag remains with the OMB office until it is handed over to the authorized representative at the shredder room. Accountability records will be adjusted after the burn bags have been delivered. Destruction actions will be recorded on OMB Form 87 by the division TSCO or by the appropriate ATSCO at the time the destruction is accomplished or at the time the burn bag is delivered to the U.D. Officer.

(c) Technical Guidance. Technical guidance concerning appropriate methods, equipment, and standards for destruction of electronic classified media, processing equipment components and the like, may be obtained by submitting all pertinent information to NSA/CSS Directorate for Information Systems Security, Ft. Meade, Maryland 20755. Specifications concerning appropriate equipment and

standards for destruction of other storage media may be obtained from the General Services Administration.

§ 1312.30 Loss or possible compromise.

Any person who has knowledge of the loss or possible compromise of classified information shall immediately secure the material and then report the circumstances to the EOP Security Officer. The EOP Security Officer will immediately initiate an inquiry to determine the circumstances surrounding the loss or compromise for the purpose of taking corrective measures and/or instituting appropriate administrative, disciplinary, or legal action. The agency originating the information shall be notified of the loss or compromise so that the necessary damage assessment can be made.

§ 1312.31 Security violations.

(a) A security violation notice is issued by the United States Secret Service when an office/division fails to properly secure classified information. Upon discovery of an alleged security violation, the USSS implements their standard procedures which include the following actions:

(1) Preparation of a Record of Security Violation form;

(2) When a document is left on a desk or other unsecured area, the officer will remove the classified document(s) and deliver to the Uniformed Division's Control Center, and

(3) Where the alleged violation involves an open safe, the officer will remove one file bearing the highest classification level, annotate it with his or her name, badge number, date and time, and return the document to the safe, which will then be secured. A description of the document will be identified in the Record of Security Violations and a copy of the violation will be left in the safe.

(b) Office of Record. The EOP Security Office shall serve as the primary office of record for OMB security violations. Reports of violations will remain in the responsible individual's security file until one year after the individual departs the Executive Office of the President, at which time all violation reports will be destroyed.

(c) Compliance. All Office of Management and Budget employees will comply with this section. Additionally, personnel on detail or temporary duty will comply with this section, however, their parent agencies will be provided with a copy of any security violation incurred during their period of service to OMB.

(d) Responsibilities for Processing Security Violations. (1) EOP Security Officer. The EOP Security Officer shall provide OMB with assistance regarding Agency security violations. Upon receipt of a Record of Security Violation alleging a security violation, the EOP Security Officer shall:

(i) Prepare a memorandum to the immediate supervisor of the office/division responsible for the violation requesting that an inquiry be made into the incident. Attached to the memorandum will be a copy of the Record of Security Violation form. The receiving office/division will prepare a written report within five working days of its receipt of the Security Officer's memorandum.

(ii) Provide any assistance needed for the inquiry conducted by the office/division involved in the alleged violation.

(iii) Upon receipt of the report of inquiry from the responsible office/division, the EOP Security Officer will:

(A) Consult with the OMB Associate Director for Administration and the General Counsel;

(B) Determine if a damage assessment report is required. A damage assessment will be made by the agency originating the classified information, and will be prepared after it has been determined that the information was accessed without authorization; and

(C) Forward the report with a recommendation to the OMB General Counsel.

(2) Immediate Supervisors. Upon receipt of the EOP Security Officer's security violation memorandum, the immediate supervisor will make an inquiry into the alleged incident, and send a written report of inquiry to the EOP Security Officer. The inquiry should determine, and the related report should identify, at a minimum:

(i) Whether an actual security violation occurred,

(ii) The identity of the person(s) responsible; and

(iii) The probability of unauthorized access.

(3) Deputy Associate Directors (or the equivalent) will:

(i) Review and concur or comment on the written report; and

(ii) In conjunction with the immediate supervisor, determine what action will be taken to prevent, within their area of responsibility, a recurrence of the circumstances giving rise to the violation.

(e) Staff Penalties for OMB Security Violations. When assessing penalties in accordance with this section, only those violations occurring within the calendar year (beginning January 1) will be considered. However, reports of all previous violations remain in the security files. These are the standard violation penalties that will be imposed. At the discretion of the Director or his designee, greater or lesser penalties may be imposed based upon the circumstances giving rise to the violation, the immediate supervisor's report of inquiry, and the investigation and findings of the EOP Security Officer and/or the OMB Associate Director for Administration.

(1) *First violation.* (i) Written notification of the violation will be filed in the responsible individual's security file; and

(ii) The EOP Security Officer and/or the Associate Director for Administration will consult with the respective immediate supervisor, and the responsible individual will be advised of the penalties that may be applied should a second violation occur.

(2) *Second violation.* (i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director for Administration will consult with the respective Deputy Associate Director (or the equivalent) and immediate supervisor and the responsible individual who will be advised of the penalties that may be applied should a third violation occur; and

(iii) A letter of Warning will be placed in the Disciplinary Action file maintained by the Office of Administration, Human Resources Management Division.

(4) *Third violation.* (i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director for Administration will consult with the OMB Deputy Director, General Counsel, the respective Deputy Associate Director (or equivalent), and the immediate supervisor and the responsible individual who will be advised of the penalties that may be applied should a fourth violation occur; and

(iii) A Letter of Reprimand will be placed in the Disciplinary Action file maintained by the OA/HRMD.

(4) *Fourth Violation.* (i) Written notification of the violation will be filed in the responsible individual's security file;

(ii) The EOP Security Officer and/or the Associate Director for Administration will consult with the OMB Director, Deputy Director, General Counsel, the respective Deputy Associate Director (or the equivalent), and immediate supervisor;

(iii) The responsible individual may receive a suspension without pay for a period not to exceed 14 days; and

(iv) The responsible individual will be advised that future violations could result in the denial of access to classified material or other adverse actions as may be appropriate, including dismissal.

Subpart C—Mandatory Declassification Review

§ 1312.32 Purpose and authority.

Other government agencies, and individual members of the public, frequently request that classified information in OMB files be reviewed for possible declassification and release. This subpart prescribes the procedures for such review and subsequent release or denial. It is issued under the authority of Executive Order 12958, April 20, 1995, as implemented by Directive No. 1, Information Security Oversight Office (60 FR 53402, October 13, 1995).

§ 1312.33 Responsibility.

All requests for the mandatory declassification review of classified information in OMB files should be addressed to the Associate Director for Administration, who will acknowledge receipt of the request. When a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken. All requests will receive a response within 180 days of receipt of the request.

§ 1312.34 Information in the custody of OMB.

Information contained in OMB files and under the exclusive declassification jurisdiction of the office will be reviewed by the office of primary interest to determine whether, under the declassification provisions of the Order, the requested information may be declassified. If so, the information will be made available to the requestor unless withholding is otherwise warranted under applicable law. If the information may not be released, in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Deputy Director, OMB, and a notice that such an appeal must be filed within 60 days in order to be considered.

§ 1312.35 Information classified by another agency.

When a request is received for information that was classified by another agency, the Associate Director for Administration will forward the request, along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made if appropriate. The requester will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1312.36 Appeal procedure.

Appeals received as a result of a denial, see § 1312.34, will be routed to the Deputy Director who will take action as necessary to determine whether any part of the information may be declassified. If so, he will notify the requester of his determination and make that information available that is declassified and otherwise releasable. If continued classification is required, the requestor shall be notified by the Deputy Director of the reasons thereafter. Determinations on appeals will normally be made within 60 working days following receipt. If additional time is needed, the requestor will be notified and this reason given for the extension. The agency's decision can be appealed to the Interagency Security Classification Appeals Panel.

§ 1312.37 Fees.

There will normally be no fees charged for the mandatory review of classified material for declassification under this section.

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BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–132, Notice No. SC–96–5–NM]

Special Conditions: Lockheed Martin Aerospace Corp. Model L382J Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This document proposes special conditions for the Lockheed Martin Aerospace Corp. Model L382J airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of a dual head up display (HUD) to be used as a primary flight display (PFD) for all regimes of normal operation. The HUD will satisfy the basic requirements of § 25.1321 and serve as the primary source of flight director command information. This document contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 25 of the federal Aviation Regulations (FAR).

DATES: Comments must be received on or before November 1, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket (ANM–7), Docket No. NM–132, 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–132. 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: Dale Dunford, FAA, Flight Test and Systems Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; telephone 206–227–2239.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or augments as they may desire. Communications should identify the regulatory docket or notice 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 before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–132.'' The postcard will be date/time stamped and returned to the commenter.

Background

On August 2, 1992, Lockheed Martin Aerospace Co. applied for an amendment to their Type Certificate No. A1SO to include their new Model L382J. The Model L382J is a derivative of the L382B/E/G currently approved under Type Certificate No. A1SO, and features a new engine (with approximately the same rated horsepower, but heavily flat-rated) and propeller, both of which are controlled by a full authority digital engine control. Additionally, the flight deck is substantially modified by the installation of four liquid crystal flight displays, dual head-up displays, and Mil-Std 1553 data buses. The flight engineer position is deleted, requiring automation of some functions as well as redesign of the front and overhead panels. Some structure has been modified but the aerodynamics of the airplane are essentially unchanged. The latest part 25 requirement will be used for all significantly modified portions of the Model 382J (as compared to the present L382), and, for the unmodified portions of the airplane, the applicable certification standard will be the Part 25 rules that were effective on February 1, 1965.

The existing rule, § 25.1321, did not anticipate the design features, symbology, chromatic limitations, and pilot view constraints associated with most HUDs. This particular HUD application is the first attempt to qualify the HUD as a PFD. Current head down displays (HDD) provide all primary and other information without requiring the flightcrew to transition from one lighting and information display format to another and are very tolerant of pilot head position regarding acquiring primary flight data. This HUD application would require the flight crewmember using the HUD to limit head position in order to ensure the ability to acquire the necessary flight information and to frequently transition to a different lighting condition and display format to acquire flight mode and navigation information. These proposed special conditions provide all the necessary requirements to determine acceptability of the HUD as a PFD. A proof of concept effort is required to substantiate that for the particular application there are no unsafe features.

Type Certification Basis

Under the provisions of § 21.101, Lockheed Martin Aerospace Corp. must show that the Model L382J meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1SO or the applicable regulations in effect on the date of application for the changes to the Model L382. In addition, the certification basis includes certain special conditions and later amended sections of Part 25 that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model L382J because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR 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 type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model L382J will incorporate a novel or unusual design feature which is a dual head up display of primary flight information in a monochromatic format using appropriate symbology that may be different from similar information provided in the head down display.

As discussed above, these special conditions are applicable to the L382J. Should Lockheed Martin Aerospace Corp. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Lockheed Martin Aerospace Corp. L382J airplanes.

1. Display Requirements

a. The HUD must provide adequate information to permit rapid evaluation of the airplane's flight state and position during all phases of flight. This must be shown to be adequate for manually controlling the airplane, and for monitoring the performance of the automatic flight control system. The monochrome HUD must be compliant with the display criteria contained in Advisory Circular 25–11, except for the color criteria. Demonstration of the HUD system adequacy for manually controlling the airplane shall be in accordance with the methodology outlined in the FAA Handling Qualities Rating Method (HQRM). This demonstration requirement is extended to all HUD display formats, unless use of specific formats is prohibited for specific phases of flight.

b. Symbols must appear clean-shaped, clear, and explicit. Lines must be narrow, sharp-edged, and without halo or aliasing. Symbols must be stable with no discernible flicker or jitter.

c. For all phases of flight, the HUD must update the positions and motions of primary control symbols with sufficient rates and latencies to support satisfactory manual control performance.

d. The HUD display must present all information in a clear and unambiguous manner. Display clutter must be minimized. The HUD symbology must not excessively interfere with pilots' forward view, ability to visually maneuver the airplane, acquire opposing traffic, and see the runway environment. Some data elements of primary flight displays are essential or critical, and must not be removed by an declutter function. Changes in the display format and primary flight data arrangement should be minimized to prevent confusion and to enhance the pilots' ability to interpret vital data.

e. The arrangement and format of the information must be sufficiently compatible with the head down displays to preclude pilot confusion, misinterpretation, or excessive cognitive workload. Immediate transition between the two displays, whether required by navigation duties, failure conditions, unusual airplane attitudes, or other reasons, must not present difficulties in data interpretation or delays/interruptions in the crew's ability to manually control the airplane or to monitor the automatic flight controls system.

f. If a wind shear detection system, a ground proximity warning system (GPWS), or a traffic alert and collision avoidance system (TCAS), as installed, the guidance, warnings, and annunciations required to be a part of these systems, and normally required to be in the pilot's primary field of view, must be displayed on the HUD.

g. The HUD display must be demonstrated to be adequate for airplane recovery from

unusual attitudes. This capability must be shown for all foreseeable modes of upset, including crew mishandling, autopilot failure (including ''slowovers''), and turbulence/gust encounters.

2. Installation Requirements

a. The arrangement of HUD display controls must be visible to and within reach of the pilot from any normal seated position. The position and movement of the controls must not lead to inadvertent operation. The HUD controls must be adequately illuminated for all normal background lighting conditions, and must not create any objectionable reflections on the HUD or other flight instruments.

b. The display brightness must be satisfactory in the presence of dynamically changing background (ambient) lighting conditions. If automatic control is not provided, it must be shown that a single setting is satisfactory. When the brightness level is altered, the relative luminance of each displayed symbol, character, or data shall vary smoothly. In no case shall any selectable brightness level allow any information to be invisible while other data remains discernible. There shall be no objectionable brightness transients when transitioning between manual and automatic control. The HUD data shall be visible in lighting conditions from 0 fL to 10,000 fL. If certain lighting conditions prevent the crew to adequately seeing and interpreting HUD data (for example, flying directly toward the sun), accommodation must be provided to permit the crew to make a ready transition to the head down displays.

c. To the greatest extent practicable, the HUD controls must be integrated with other controls, including the flight director, to minimize the crew workload associated with HUD operation and to ensure flightcrew awareness of engaged flight guidance modes.

d. The installation of the HUD system must not interfere or restrict other installed equipment such as emergency oxygen masks, headsets, or microphones. The installation of the HUD must not adversely affect the emergency egress provisions for the flightcrew, or significantly interfere with crew access. The system also must not hinder the crew's movement while conducting any flight procedures.

e. The installation of the HUD system must not present the crew with any objectionable glare or reflection in any lighting conditions. This is equally applicable from glare or reflections visible on the HUD system itself, or that originating from the HUD system and visible in other ares such as the windshield. The installation of the HUD system must not significantly obstruct either pilot's external field of view when both combiners are deployed. The external view requirements of § 25.773 must be retained with both combiners deployed.

f. The HUD system must be designed and installed to prevent the possibility of pilot injury in the event of an accident or any other foreseeable circumstance such as turbulence encounter, hard landing, bird strike, etc. The installation of the HUD, including overhead unit and combiner, must comply with the head injury criteria of § 25.562, Amendment 25–64.

g. The design eyebox shall be centered around each pilot's design eye position, and must be large enough that the minimum monocular field of view is visible at the following minimum displacements from the cockpit Design Eye Position:

Lateral: 1.5 inches left and right
Vertical: 1.0 inches up and down
Longitudinal: 2.0 inches fore and aft

These requirements must be met for pilots from 5′2″ to 6′3″ tall, while seated with seat belts fastened and with the pilot positioned at the design eye position (ref. § 25.777(c)). Larger eyebox dimensions may be required for meeting operational requirements for use as a full time primary flight display.

h. The HUD system combiner must not create any objectionable distortion of the pilot's external view. The optical qualities (accommodation, luminance, vergence) of the HUD shall be uniform across the entire field of view. When viewed by both eyes from any off-center position within the eyebox, non-uniformities shall not produce perceivable differences in binocular view. Notwithstanding compliance with these minimum eyebox dimensions, the HUD eyebox must be large enough to adequately serve as a primary flight display without inducing adverse effects on pilot vision and fatigue.

3. System Requirements

a. The HUD system must be shown to perform its intended function as a primary flight display during all phases of flight. The normal operation of the HUD system cannot adversely affect, or be adversely affected by other airplane systems. Malfunctions of the HUD system which cause loss of all primary flight displays, including both HUDs and HDDs, shall be extremely improbable.

b. The criticality of the HUD system's function to display flight and navigation data, including the potential to display hazardously misleading information, must be assessed according to §§ 25.1309 and 25.1333, Advisory Circular (AC) 25–11 paragraph 4.a., and AC 25.1309–1A. All alleviating flightcrew actions that are considered in the HUD safety analysis must be validated during testing for incorporation in the airplane flight manual procedures section or for inclusion in type-specific training.

c. Since the display of hazardously misleading information on more than one primary flight display must be extremely improbable, HUD system software shall be developed to Level A requirements, as specified by RTCA Document DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification.''

d. The HUD system must monitor the position of the combiner and provide a warning to the crew when the combiner position is such that conformal symbols will be hazardously misaligned.

e. The HUD system must be shown adequate for airplane control and guidance during an engine failure any phase of flight.

f. There must be no adverse physiological effects of long term use of the HUD system, such as fatigue or eye strain, that cause the pilot to have to revert to the HDD. Use of the HUD system also cannot require excessive cognitive workload or unreasonable limitations on head position.

g. The current mode of the flight guidance/automatic flight control system, shall be clearly annunciated in the HUD unless there are compensating features.

i. The HUD system must be shown to comply with the high intensity radiated fields certification requirements specified in another special condition, not yet finalized.

Issued in Renton, Washington, on September 9, 1996.

James V. Devany,

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

[FR Doc. 96–23815 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 96–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80 and C–9 (Military) Series Airplanes, and Model MD–88 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 certain McDonnell Douglas Model DC–9, DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes. This proposal would require either installation of external protective doublers between the outboard flight spoiler actuators and the aft spar webs of the wings, or replacement of the pistons of the outboard flight spoiler actuators with improved pistons. This proposal is prompted by reports of failure of the piston of the outboard flight spoiler actuator due to fatigue at the clevis end of the upper lug mounting hole of the piston. The actions specified by the proposed AD are intended to prevent such failure of the piston and the consequent puncturing of the aft spar web. This condition, if not corrected, could result in fuel leakage and reduced structural integrity of the wings.

DATES: Comments must be received by October 28, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–99–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 McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

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–99–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–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the pistons of the outboard flight spoiler actuators on the left and right wings of McDonnell Douglas Model DC–9, DC–9–80, or MD–88 series airplanes failed. Investigation revealed that fatigue of the clevis end of the upper lug mounting hole on the piston caused the pistons to fail. Such failure can result in the failed piston puncturing the aft spar web of the wing. This condition, if not corrected, could result in fuel leakage and reduced structural integrity of the wings.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–27–300, Revision 02, dated June 29, 1995, which describes procedures for installation of an external protective doubler between the aft spar web and the piston of the outboard flight spoiler actuator on the wings; and procedures for replacement of the pistons of outboard flight spoiler actuators with improved pistons of higher strength. Installing a protective doubler or replacing the spoiler actuator piston will minimize the possibility of a failed piston puncturing a fuel tank and reducing the structural integrity of the wing.

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 either installation of external protective doublers between the aft spar webs and the pistons of the outboard flight spoiler actuators on the wings, or replacement of the pistons of the outboard flight spoiler actuators with improved pistons. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 1,571 Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry would be affected by this proposed AD.

The proposed installation of external doublers would take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the installation of external doublers proposed by this AD on U.S. operators is estimated to be $2,340 per airplane.

The proposed replacement of the pistons of the outboard flight spoiler actuators would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,180 per airplane. Based on these figures, the cost impact of the replaced of the pistons proposed by this AD on U.S. operators is estimated to be $5,900 per airplane.

These cost impact figures 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:

McDonnell Douglas: Docket 96–NM–99–AD.

Applicability: Model DC–9, Model DC–9–80 and C–9 (military) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin DC9–27–300, Revision 02, dated June 29, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage and reduced structural integrity of the wings due to puncturing of the wings by a failed piston of the outboard flight spoiler actuator, accomplish the following:

(a) Prior to the accumulation of 5,000 landings after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–27–300, Revision 02, dated June 29, 1995.

Note 2: Installation of McDonnell Douglas flight spoiler actuator assembly, part number (P/N) 5915900–5525, on the right and left wings prior to the effective date of this AD is considered acceptable for compliance with the requirements of this paragraph.

(1) Install external protective doublers between the outboard flight spoiler actuators and the aft spar webs of the left and right wings; or

(2) Replace the pistons of the outboard flight spoiler actuators on the left and right wings with improved pistons,

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on September 10, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23709 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–ANE–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

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 General Electric Aircraft Engines (GE) CT7 series turboprop engines. This proposal would require replacement of the gas generator turbine stage 2 forward cooling plates prior to the published cyclic life limits. The proposal also defines the new, reduced cyclic life limits for the affected forward cooling plates. This proposal is prompted by reports of gas generator turbine stage 2 forward cooling plate failures. The actions specified by the proposed AD are intended to prevent gas generator turbine stage 2 forward cooling plate failure, which could result in an uncontained engine failure.

DATES: Comments must be received by October 17, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–06, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594–3140, fax (617) 594–4805. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7139, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report 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–ANE–06.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–06, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of gas generator turbine stage 2 forward cooling plate failures on General Electric Aircraft Engines (GE) CT7 series turboprop engines. In one incident the gas generator turbine stage 2 forward

cooling plate failure caused an engine uncontainment. The investigation revealed that the failures were caused by low cycle fatigue (LCF) of the gas generator turbine stage 2 forward cooling plate. In addition, the investigation revealed that the cooling plates can be exposed to higher temperatures if certain combinations of clearances, leakage, ambient conditions, and/or engine conditions exist, in which case the cooling plates can be subjected to the combined effects of creep and LCF. This condition, if not corrected, could result in gas generator turbine stage 2 forward cooling plate failure, which could result in an uncontained engine failure.

The FAA has reviewed and approved the technical contents of GE Aircraft Engines (CT7–TP Series) Service Bulletin (SB) A72–381, dated January 17, 1996, that describes procedures for replacement of affected gas generator turbine stage 2 forward cooling plates and defines new, reduced cyclic life limits.

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 replacement of the gas generator turbine stage 2 forward cooling plate within 30 days after the effective date of this AD, or prior to reaching the new, reduced cyclic life limits listed in the Accomplishment Instructions of GE Aircraft Engines (CT7–TP Series) SB A72–381, dated January 17, 1996, whichever occurs later. This compliance end-date was determined based on risk analysis methodology. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 1,100 engines of the affected design in the worldwide fleet. The FAA estimates that 500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Parts will be supplied by the manufacturer to operators under GE's Engine Care Maintenance Plan (ECMP). At this time, all operators fall under the ECMP. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $240,000.

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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

General Electric Aircraft Engines: Docket No. 96–ANE–06.

Applicability: General Electric Aircraft Engines (GE) Models CT7–5A2, -7A, -9B, and -9C turboprop engines, with gas generator turbine (GGT) stage 2 forward cooling plates, Part Number (P/N) 6064T10P01 and P/N 6086T91P02, installed. These engines are installed on but not limited to Construcciones Aeronauticas, SA (CASA) CN–235 series and SAAB–SCANIA SF340 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent GGT stage 2 forward cooling plate failure, which could result in an uncontained engine failure, accomplish the following:

(a) Within 30 days after the effective date of this AD, or prior to reaching the new, reduced cyclic life limits listed in the Accomplishment Instructions of GE Aircraft Engines (CT7–TP Series) Service Bulletin (SB) A72–381, dated January 17, 1996, whichever occurs later, remove from service GGT stage 2 forward cooling plates, and replace with a serviceable part, which is defined as a GGT stage 2 forward cooling plate that has less than the new, reduced cyclic limits on the effective date of this AD, as defined in that SB.

(b) This action establishes the following new, reduced cyclic life limits for affected GGT stage 2 forward cooling plates:

(1) 8,000 cycles since new (CSN) for GGT stage 2 forward cooling plates, P/N 6064T10P01, identified by serial numbers listed in Tables 1 and 2 of GE Aircraft Engines (CT7–TP Series) SB No. A72–381, dated January 17, 1996, for GE CT7–5A2, -7A, -9B, and -9C engine models.

(2) 12,000 CSN for GGT stage 2 forward cooling plates, P/N 6064T10P01 (not listed in (1) above), and P/N 5086T91P02, for GE CT7–5A2 and -7A engine models.

(3) 9,000 CSN for GGT stage 2 forward cooling plates, P/N 6064T10P01 (not listed in (1) above), and P/N 5086T91P02, for GE CT7–9B/-9C engine models.

(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, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

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

Issued in Burlington, Massachusetts, on September 10, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–23755 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AGL–14]

Establishment of Class E Airspace; Tomahawk, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 21, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–14, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An information docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–14.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Tomahawk Regional Airport, Tomahawk, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A). Controlled airspace extending upward from 700 to 1200 feet AGL, is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 Class E airspace designation listed in this document would be published subsequently in the Order.

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Tomahawk, WI [New]

Tomahawk Regional Airport, WI
(lat. 45°28′10″N., long. 89°48′16″S.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Tomahawk Regional Airport.

* * * * *

Issued in Des Plaines, Illinois on September 4, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–23805 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–15]

Modification of Class E Airspace; Toledo, OH

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E5 airspace at Bowling Green, Wood County Airport, Toledo, OH, to accommodate diverse departure traffic from Wood County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating is visual weather conditions.

DATES: Comments must be received on or before October 21, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–15, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Force Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E5 airspace at Bowling Green, Wood County Airport to accommodate diverse departure traffic from Wood County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 Class E airspace designation listed in this document would be published subsequently in the Order.

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565. 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Toledo, OH

Bowling Green, Wood County Airport, OH (lat. 41°23′28″ N., long. 83°37′49″ W.)

That airspace extending upward from 700 feet above the surface within the area bounded by a line beginning at lat. 41°40′00″ N., long. 84°20′00″ W.; to lat. 41°49′00″ N., long. 83°37′00″ W.; to lat. 41°34′00″ N., long. 83°19′00″ W.; to lat. 41°15′00″ N., long. 83°34′00″ W.; to lat. 41°22′00″ N., long. 84°05′00″ W.; to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on September 4, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–23806 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AEA–08]

Proposed Establishment of Class E Airspace, Saluda, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Class E airspace at Saluda, VA. The development of a new Standard Instrument Approach Procedure (SIAP) at Hummel Field Airport based on the Global Positioning System (GPS) has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 31, 1996.

ADDRESSES: Send comments on the proposed rule in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 96–AEA–08, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AEA–08''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRN. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above the surface (AGL) at Saluda, VA. A GPS RWY 1 SIAP has been developed for Hummel Field Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace extending upward from 700 feet above the surface 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 Class E airspace designation listed in this document would be published subsequently in the Order.

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

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., P. 389; 14 CFR 11.69.

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Saluda, VA [New]

Hummel Field Airport, VA
(Lat. 37° 36′01″ N, long. 76° 26′59″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Hummel Field Airport and within 4 miles either side of the 176° bearing from the Hummel Field Airport extending from the 6-mile radius to 9 miles south of the airport.

* * * * *

Issued in Jamaica, New York, on September 3, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–23810 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–2]

Proposed Establishment of Class E Airspace; Murrieta/Temecula, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace area at Murrieta/Temecula, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at French Valley Airport, Murrieta/Temecula, CA.

DATES: Comments must be received on or before October 4, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 96–AWP–2, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written date, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) by establishing Class E airspace area at Murrieta/Temecula, CA. The development of a GPS SIAP at French Valley Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 18 SIAP at French Valley Airport, Murrieta/Temecula, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth 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 Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 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 proposed rule would 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 CA E5 Murrieta/Temecula, CA [New]

French Valley Airport, CA

(Lat. 33°34′34″ N, long. 117°07′41″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the French Valley Airport.

* * * * *

Issued in Los Angeles, California, on September 3, 1996.

James H. Snow,

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

[FR Doc. 96–23811 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC06

Amendments to Transportation Allowance Regulations for Federal and Indian Leases to Specify Allowable Costs and Related Amendments to Gas Valuation Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of Proposed Rulemaking, which was published in the Federal Register on July 31, 1996 (61 FR 39931). The proposed rule would amend the regulations governing allowances for transportation of gas and clarify the methods by which gas royalties and deductions for gas transportation are calculated. In response to requests for additional time, MMS will extend the comment period from September 30, 1996, to October 30, 1996.

DATES: Comments must be received by 4 p.m. Mountain time on October 30, 1996.

ADDRESSES: Written comments should be sent to the Minerals Management Service, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165; courier address: Building 85, Denver Federal Center, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432, fax (303) 231–3194, or e-Mail David—Guzy@smtp.mms.gov.

Dated: September 11, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–23756 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 960828232–6232–01]

RIN 0651–AA90

Recordal Fees Associated with the Fastener Quality Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) is proposing to establish fees associated with recordation of insignias of manufacturers and private label distributors to ensure the traceability of a fastener to its manufacturer or private label distributor. This proposal is in accordance with provisions of the Fastener Quality Act.

DATES: Written comments must be submitted on or before October 17, 1996. No meeting will be held.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: Lizbeth Kulick, Office of the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Va. 22202–3513 or by fax to (703) 308–7220.

FOR FURTHER INFORMATION CONTACT: Lizbeth Kulick by telephone at (703) 308–8900, or by fax at (703) 308–7220, or by mail marked to her attention and addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Va. 22202–3513.

SUPPLEMENTARY INFORMATION: The Department of Commerce issued a notice of proposed rulemaking to implement the Fastener Quality Act. 57 FR 37032, Aug. 17, 1992. Under that notice, the task of recording fastener insignia was assigned to the PTO. 57 FR 37033–35, Aug. 17, 1992. That notice provided for recovery of insignia costs through user fees. 57 FR 37035–36, Aug. 17, 1992. The PTO proposes three twenty-dollar fees to recover its costs associated with the insignia recordation program.

Cost Calculations

The cost of processing an application for recordal of an insignia is as follows:

Compensation and Benefits	1,000
Hardware and Software Costs	4,500
Subtotal	5,500
General and Administrative Overhead @ 17%	950
Total Costs	6,450
Estimated Workload	300
Fee Amount	21.50
Rounded Fee	$20

Two rules, 37 CFR §§ 2.53 and 2.189, are being removed because they are not necessary. Section 2.53 specifies the manner in which drawings must be transmitted. Section 2.189 simply states the Office's policy on publishing amendments to the rules. The policy is not changing, but does not have to be stated as a rule.

Other Considerations

It has determined that this rule is not significant for the purposes of Executive Order 12866. The information collections required by this proposed rule are pending approval before the Office of Management and Budget (OMB number 0651–0028). The affected public would be manufacturers and private label distributors of certain types of industrial fasteners. The estimated average number of responses is six hundred. The estimated time per response is ten minutes, so the estimated total annual burden is one hundred hours. The collected information is needed to ensure that a fastener can be traced to its manufacturer or private label distributor.

This proposed fee does not require notice and comment under 5 U.S.C. 553 or any other statute, so no analysis or certification is required under 5 U.S.C. 603(a).

Lists of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO proposes to amend 37 CFR part 2 as set forth below.

PART 2—RULES APPLICABLE TO TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.7 is added to read as follows:

§ 2.7 Fastener Recordal Fees.

(a) Application fee for recordal of insignia	$20.00
(b) Renewal of insignia recordal	$20.00

(c) Surcharge for late renewal of insignia recordal $20.00

§ 2.53 [Removed]

3. Section 2.53 is removed.

§ 2.189 [Removed]

4. Section 2.189 is and the undesignated center heading ''Amendment of Rules'' are removed.

Dated: September 10, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–23666 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–005–1005; FRL–5611–3]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(1); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening public comment period.

SUMMARY: The EPA is providing notice that the public comment period for a notice of proposed rulemaking published July 29, 1996 (61 FR 39375), has been reopened until October 17, 1996. The July 29, 1996, action proposes to adopt certain revisions submitted by the state of Iowa to meet requirements of the Clean Air Act, and improve the state's permitting program and air quality. Comments on the proposal were due by August 28, 1996.

A number of persons have indicated that they desire more time to adequately address the issues contained in the proposed rule. The EPA has determined that additional time for comment is appropriate and is therefore reopening the comment period.

DATES: Comments are now due on or before October 17, 1996.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–23790 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 36

RIN 1093–AA07

Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and simplify the regulatory definition of the term ''economically feasible and prudent alternative route'' as used in the review of proposed transportation and utility systems in Alaska under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA).

DATES: Comments are requested by November 18, 1996.

ADDRESSES: Comments on the proposed regulations should be addressed to: Field Director, Alaska Field Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503–2892.

FOR FURTHER INFORMATION CONTACT: David A. Funk, Alaska Field Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503–2892. Phone: (907) 257–2589.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1980, the Alaska National Interest Lands Conservation Act (ANILCA) was signed into law as Public Law 96–487 (94 Stat. 2371, 16 U.S.C. 3101, et seq.). Title XI of ANILCA, which is entitled ''Transportation and Utility Systems in and across, and Access into, Conservation System Units,'' established guidelines and procedures for submitting and processing applications for transportation and utility systems (TUS) in Alaska when any portion of the route of the system will be within any conservation system unit, national recreation area, or national conservation area. In addition, Title XI authorizes special access, temporary access, and access to inholdings.

On July 15, 1983, the Department of the Interior (Department) proposed comprehensive regulations to implement ANILCA Title XI on lands in Alaska under the jurisdiction of the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) (48 FR 32506). On September 4, 1986, the Department published final Title XI regulations (51 FR 31619).

In early 1987, the Trustees for Alaska and other groups (Trustees) sued the Department to challenge the Title XI regulations as exceeding the authority granted to the Department by ANILCA. Parties intervening in the case included Arctic Slope Regional Council, the Alaska Miners Association, the Alaska Forest Association, and the Resource Development Council for Alaska, Inc. (The State of Alaska's Motion to Intervene on appeal is pending.) In Orders dated April 29, 1991, and March 16, 1993, the U.S. District Court for the District of Alaska granted summary judgment to the Department. The Trustees appealed the lower court's decision to the U.S. Court of Appeals for the Ninth Circuit, which assigned the case to the Chief Circuit Mediator to explore whether possible revision of the Title XI regulations, then under consideration by the Department of the Interior, might provide a basis for settlement. Based on all the parties' oral stipulation of agreement, and with the State of Alaska's concurrence, the Chief Circuit Mediator entered a court order on August 30, 1996, dismissing the litigation on the basis of the Department's proposal of a single regulatory revision to the existing Title XI regulations. If, after consideration of comments received in response to today's proposed rulemaking, the Department decides to promulgate a final rule based on the language of the proposed rule, the Ninth Circuit Court will dismiss the Title XI appeal with prejudice.

The Department is today proposing one revision to the 1986 regulations in order to improve the regulations' workability and reduce the opportunities for delays in decision-making. The decision to propose this one revision follows substantial review and discussion with interested parties both within and outside the Department. Based on these discussions and the August 30, 1996 Court Order entered by the Ninth Circuit's Chief Mediator, the Department is hopeful that this rulemaking process will result in settlement of the longstanding litigation.

The Department is not proposing any other revisions of the Title XI regulations. Thus, for example, the 1986 regulations implementing the Title XI provisions concerning access to inholdings, special access, and temporary access remain intact. Also, the Department is not proposing any changes to the regulatory provisions governing access to subsistence resources under Title VIII of ANILCA

(*see* 36 CFR § 13.46 (NPS) and 50 CFR § 36.12 (FWS)). Finally, this rulemaking does not concern recognition and management of R.S. 2477 rights-of-way.

Section-by-Section Analysis

Section 36.2 Definitions

As a general matter, ANILCA Title XI establishes the following criteria for approval of a transportation or utility system across a conservation system unit, national conservation area, or national recreation area in Alaska: (1) The proposed transportation or utility system must be ''compatible with the purposes for which the unit was established,'' and (2) there must be no ''economically feasible and prudent alternative route for the system.'' This rulemaking proposes to revise the regulatory definition of the term ''economically feasible and prudent alternative route'' in the second criterion by replacing the complex definition promulgated in 1986 with the simpler definition originally proposed in 1983.

The existing definition promulgated in 1986 reads as follows:

''*Economically feasible and prudent alternate route*'' means an alternate route must meet the requirements for being both economically feasible and prudent. To be economically feasible, the alternate route must be able to attract capital to finance its construction and an alternate route will be considered to be prudent only if the difference of its benefits minus its costs is equal to or greater than that of the benefits of the proposed transportation or utility system minus its costs.

The revised definition which the Department is proposing today is the same as the definition originally proposed in 1983 (48 FR 32506), as follows:

''*Economically feasible and prudent alternative route*'' means a route either within or outside an area that is based on sound engineering practices and is economically practicable but does not necessarily mean the least costly alternative route.

The proposed definition is simpler and more straightforward than the elaborate formula which was added in the final 1986 regulations. The proposed definition includes the economic considerations mentioned in the legislative history, but avoids the complex and potentially misleading quantitative analysis required by the 1986 definition. The proposed definition avoids the opportunities for delay and controversy inherent in the 1986 definition. Finally, the proposed definition is more likely to facilitate decisions consistent with the statutory preference for routing a TUS outside a conservation system unit, national recreation area, or national conservation area expressed in ANILCA section 1104(g)(2)(B). A technical correction to this definition replaces the term ''alternate route'' with the analogous, statutorily used term, ''alternative route.''

Public Participation

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this rulemaking document to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of this proposal are David A. Funk and Russel J. Wilson of the Alaska Regional Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C.

Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Compliance With Other Laws

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department has determined that this rule will not have a significant economic effect on a substantial number of small entities, nor does it require a preparation of a regulatory analysis.

The rule has been reviewed under Executive Order 12866.

The Department has determined this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act pursuant to 516 DM 2, Appendix 1.5. The action was previously covered by an Environmental Assessment and a Finding of No Significant Impact. None of the exceptions to the categorical exclusions in 516 DM 2, Appendix 2, applies.

List Of Subjects in 43 CFR Part 36

Access, Alaska, Conservation system units, National parks, Rights-of-way, Traffic regulation, Transportation, Utilities, Wildlife refuges.

Accordingly, 43 CFR Part 36 is proposed to be amended as set forth below:

PART 36—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS IN ALASKA

1. The authority section for part 36 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 668dd *et seq.*, and 3101 *et seq.*; 43 U.S.C. 1201.

2. Section 36.2 is amended by revising paragraph (h) to read as follows:

§ 36.2 Definitions.

* * * * *

(h) *Economically feasible and prudent alternative route* means a route either within or outside an area that is based on sound engineering practices and is economically practicable but does not necessarily mean the least costly alternative route.

* * * * *

Dated: September 11, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: September 11, 1996.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 96–23775 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 92–105; DA 96–1500]

Pleading Cycle Established for Request of the United States Department of Justice That 311 be Reserved for Use by Communities for Non-Emergency Police Telephone Calls

September 10, 1996.

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: On September 10, 1996 the Commission released a public notice inviting comment on a request by the United States Department of Justice's Office of Community Oriented Policing Services that an N11 code, specifically 311, be reserved on a national basis for use by communities for non-emergency police telephone calls. The intended effect of this action is to solicit comments from the public on the request.

DATES: Comments should be Filed by October 10, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, (202) 418–2352, of the Common Carrier Bureau, Network Services Division.

SUPPLEMENTARY INFORMATION:

Comments Due October 10, 1996

In a letter dated August 26, 1996, the United States Department of Justice's Office of Community Oriented Policing Services (DJ) asked that an N11 code, specifically 311, be reserved on a national basis for use by communities for non-emergency police telephone calls. DJ suggested that the N11 code could be used to give access to other government services, at the discretion of each jurisdiction.

We invite comment on DJ's request. Comments should be filed by October 10, 1996, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent the Commission's contractor for public records duplication, ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments should refer to CC Docket No. 92–105. The text of the DJ letter and the comments will be available for inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies can also be obtained from ITS by calling (202) 857–3800.

For further information contact Elizabeth Nightingale, Network Services Division, Common Carrier Bureau, at (202) 418–2320.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 96–23802 Filed 9–16–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Closure of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; closing of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it is closing the public comment period for comments on the process whereby the Service identifies candidates for addition to the lists of endangered or threatened wildlife and plants. The proposed changes were contained in the Candidate Notice of Review (candidate notice) published in the Federal Register on February 28, 1996. The Service continues to evaluate its current practice of using information provided by states and private and public interests to evaluate species for potential listing under the Endangered Species Act. Based on public comments, the Service may make policy changes to the candidate species and notice of review process. The Service continues to accept information on the biological status and threats facing any individual species until further notice.

DATES: Comments of a general nature, including comments that are related to the process whereby species are identified as candidates for protection under the Endangered Species Act of 1973 (Act), as amended, will be accepted and considered until October 17, 1996.

ADDRESSES: Comments on the Service's candidate notice process should be directed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see ADDRESSES section).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1996, the Service published a revised candidate notice of review in the Federal Register (61 FR 7596) that announced changes to the way the Service identifies species that are candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). For reasons outlined in the candidate notice, the Service noted its intention to discontinue maintaining a list of species that were previously identified as ''category-2 candidates.'' Category-2 candidates were species for which the Service had information indicating that protection under the Act may be warranted but for which it lacked sufficient information on status and threats to justify preparation of a proposed listing.

In addition to soliciting biological information on taxa that are candidates for listing under the Act, the Service also solicited public comments of a general nature (61 FR 7596; February 28, 1996) when it announced the revisions to the candidate identification process. The candidate notice specified no closing date for comments of either a general, or a species-specific nature. The Service now announces that it will consider all public comments on the matter of discontinuing the practice of identifying category-2 candidate species that are received on or before October 17, 1996. By December 1, 1996, the Service will publish a subsequent notice in the Federal Register addressing all comments received and indicating a final decision on this issue and how the Service intends to identify species that are under consideration for possible addition to the list of endangered or threatened species.

As solicited in the Service's February 28, 1996 candidate notice (61 FR 7596), comments and information relating to the biological status and threats of particular taxa that are, or should be, regarded as candidates for protection under the Act may be submitted at any time to the Regional Director of the Region identified as having lead responsibility. Biological status and threat information for species that do not have a designated lead Region should be submitted to the Division of Endangered Species, Washington, D.C.

National Environmental Policy Act

The Service does not consider any decision to discontinue the maintenance of a list of category-2 candidate species in notices of review to be a major Federal action significantly affecting the human environment for purposes of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Further, the Department of the Interior's Departmental Manual (DM) categorically excludes, ''Activities which are educational, informational, advisory or consultative to other agencies, public or private entities, visitors, individuals, or the general public'' (516 DM 2, Appendix 1, item 1.11). Notices of review serve the purpose of informing Federal agencies, state agencies, and the general public of taxa that are candidates for possible addition to the lists of endangered or threatened wildlife and plants. They also serve as data-gathering tools to assist the Service in developing the best available scientific and commercial data on such taxa. There is no statutory or regulatory mandate on how to structure or when to publish these notices. Thus, even if the Service's decision to discontinue maintenance of a list of species of concern as category-2 candidates in notices of review were considered an ''action'' for purposes of

NEPA, such would fall within this categorical exclusion. The Service also believes that the exceptions to categorical exclusions (516 DM 2, Appendix 2) would not be applicable to such a decision, especially in light of the absence of environmental effects for such action.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 6, 1996

John G. Rogers

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–23718 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Threatened Status for Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed threatened status for the copperbelly water snake (*Nerodia erythrogaster neglecta*) is extended. This snake occupies portions of southern Michigan, northwestern Ohio and adjacent northeastern Indiana, southern Indiana, southeastern Illinois, and western Kentucky.

DATES: Comments from all interested parties must be received by November 15, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403–2121.

FOR FURTHER INFORMATION CONTACT: David Hudak, Field Supervisor, (see **ADDRESSES** section), 812/334–4261 extension 200.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to list the copperbelly water snake (sometimes referred to as the northern copperbelly water snake) as threatened was published on August 18, 1993 (58 FR 43860). A public hearing on the proposal was held in Indianapolis on April 4, 1994. The current comment period began on July 16, 1996, and closes on September 16, 1996.

On April 10, 1995, Public Law 104–06 imposed a moratorium which prevented the addition of any species to the Threatened and Endangered Species List. Thus, the Service was prevented from making a final decision on the proposed threatened classification of the copperbelly water snake. The moratorium remained in effect until April 26, 1996, at which time Public Law 104–134 was enacted, providing for the termination of the listing moratorium by the President.

The Service is required to use the best available scientific and commercial data in making listing determinations under the Endangered Species Act of 1973, as amended. The Service's Final Listing Priority Guidance, published May 16, 1996, (61 FR 24722) notes that the inaction forced upon the Service by the moratorium and related funding limitations may result in a need to reopen comment periods due to unresolved questions or the potential for the existence of new information. Pursuant to this Guidance, the Service reopened the comment period on July 16, 1996, (61 FR 37034) for 60 days to ensure that the best scientific and commercial information currently available would be used in making a final listing determination for the copperbelly water snake.

The Service has contracted for a report on the current biological status of the northern population (southern Michigan and the adjacent portions of Indiana and Ohio) of the copperbelly water snake. This report has not yet been completed. Due to the expected importance of this updated information in evaluating the status of the northern populations, the Service is extending the current comment period so that the report will be available and reviewed by the Service prior to making a final listing decision. Parties wishing to receive a copy of the northern population report were asked, in the July 16, 1996, Federal Register notice, to furnish their address to the Service; copies of the report will be sent to those parties when the report is received by the Service.

During this comment period the Service has been working with representatives of the coal industry, the Farm Bureau Federation, State fish and wildlife resource agencies, and State surface mining regulatory agencies to develop conservation plans for the copperbelly water snake and its habitat in Illinois, Kentucky, and southern Indiana. These efforts have been productive and will be continued during the extended comment period. The scope and success of these and other conservation actions will be taken into consideration when the Service makes its final listing decision.

Author

The primary author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612–725–3536).

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 1996.

John A. Blankenship,

Acting Regional Director, Region 3, Ft. Snelling, MN.

[FR Doc. 96–23865 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 960416112–6256–03; I.D. 091296B]

RIN 0648–AI29

Options for 1997 Rulemaking for Atlantic Tunas

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

ACTION: Advanced notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is considering rulemaking on a number of issues that affect the Atlantic tuna fishery: (1) Changes in Atlantic tuna permit regulations to require annual permits, establish mutually exclusive recreational and commercial fishing categories, recover administrative costs through a permit fee; (2) modifications to the Atlantic bluefin tuna (ABT) Angling category quotas to address geographic distribution of fishing opportunities, and establishing mandatory self-reporting systems for ABT recreational quota monitoring; (3) modifications to the target catch requirements for the Incidental longline ABT fishery; (4) measures necessary to implement quota modifications and/or any other management recommendations for Atlantic tunas

following the 1996 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT); and (5) methods for improving quota monitoring and enforcement, and alternative measures to extend the season.

DATES: Written comments on this ANPR must be received on or before October 15, 1996.

ADDRESSES: Written comments should be addressed to William Hogarth, Acting Chief, Highly Migratory Species Management Division (F/CM4), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347.

SUPPLEMENTARY INFORMATION:

Permits: NMFS currently has a three-year staggered renewal permitting system for Atlantic tunas. This system has hampered the agency's ability to monitor closely the size of the fleet that participates in the Atlantic tuna fishery. NMFS therefore is considering implementing an annual renewal of permits, available through a modernized internet and phone voice-recognition system, which would be subject to a permit fee calculated so as to recover administrative costs.

NMFS has received numerous comments regarding the possible separation of recreational and commercial ABT fishers; the current permit system allows Angling, General, and Charter/Headboat category vessels to target and land recreational-size ABT, while General and Charter/Headboat may also target, land and sell commercial size ABT. NMFS solicits comments on the possible implementation of a permit system that allows vessels to target and land exclusively commercial-size fish or exclusively recreational-size fish, with no possibility for overlap.

Angling Category Operations: Historically, the Angling category school size subcategory has been divided between a ''north'' and a ''south'' area quota, with the division at Delaware Bay, while the large school-small medium category has not been subdivided. In the last few years, there has been increased concern regarding the geographic distribution of these harvests. NMFS is considering alternative sub-quota divisions that would increase the geographical extent of recreational fishing opportunities.

NMFS is also of considering alternatives to the Large Pelagic Survey (LPS) for the purposes of quota monitoring in the ABT recreational fishery. NMFS has attended a number of meetings and workshops with constituents regarding recreational quota monitoring, and is soliciting comments on the possible implementation of a self-reporting system for ABT quota monitoring, including the use of punch-cards, tags, hot-line phone-in systems, and/or other mandatory self-reporting mechanisms. Accuracy of these self-reporting systems may be ensured through the use of personal identification numbers, at sea and dockside enforcement, and follow-up surveys to ensure that ABT catches are being reported.

Incidental Category Target Catch Requirements: The incidental longline fishery, which commonly directs fishing effort on swordfish, sharks and non-bluefin tunas, also occasionally catches bluefin tuna incidental to these other fisheries. Under current Atlantic bluefin tuna regulations, the incidental longline fishery is permitted to retain: (1) One (bluefin tuna) per vessel per fishing trip landed south of 34°00' N. latitude, provided that for the months of January through April at least 1,500 pounds (680 kg), and for the months of May through December at least 3,500 pounds (1,588 kg), either dressed or roundweight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and (2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 34°00' N. latitude. These longline fishery retention allowances receive a quota each year from the overall bluefin tuna quota, along with other directed fishery quotas.

The quota for the Incidental category has not been met in recent years, most notably due to decreased landings by longline vessels fishing in the southern area (south of 34°00' N. latitude). This decrease in landings is attributable in part to a decline in effective fishing effort in the Gulf of Mexico and south Atlantic region. Consequently, in 1994 and 1995, a portion of the southern area quota was transferred to the northern area longline fisheries. NMFS also adjusted the north-south dividing line in 1993, without reapportionment of the area subquotas. This division line adjustment prompted comments regarding division of quota and specification of landings requirements affecting the northern and southern subcategories of the Incidental longline category.

In addition, NMFS has received numerous written comments that the landings requirements applicable in the northern subcategory cannot be met by vessels in the shark longline fisheries operating off of North Carolina in the winter months, due to the trip limits in effect under the shark fishery management plan. Participants in this winter shark fishery have noted that the Atlantic bluefin tuna and shark regulations, taken together, force discarding of Atlantic bluefin tuna. These fishermen have requested an allowance to land and market fish that would otherwise be discarded dead, thus increasing boat revenues without contributing to additional Atlantic bluefin tuna mortality.

In response to comments, NMFS undertook a review of the Atlantic bluefin tuna incidental catch regulations, including division of the quotas, position of the dividing line between the northern and southern subcategories, and landing criteria applicable to each management area. Observer data from longline trips taken from 1991–1994 indicate that 2 or fewer ABT were hooked on 91 percent of all observed trips. Landings information indicates that median values for landed catch are approximately 1500 pounds for trips made in the months of January through April, and 3500 pounds for trips made in May through December, in fisheries south of 34°00'; and 3500 pounds for trips made throughout the year in fisheries north of 34°00'. From that same study, the 75th percentile values for landed catch are approximately 4500 pounds for trips made in the months of January through April, and 6000 pounds for trips made in May through December, in fisheries south of 34°00'; and for trips made throughout the year in fisheries north of 34°00'.

As a result of this review, NMFS requests comments on possible changes to reduce incidental mortality of ABT while allowing for commercial use of unavoidable bycatch—namely, to reapportion the base Incidental longline quota between the northern and southern geographic regions to more accurately reflect catch trends for those areas and to also adjust target catch requirements for both the northern and southern Incidental longline subcategories. Target catch is species other than Atlantic bluefin tuna that are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold, and can be in either whole or dressed weight pounds (lb) or kilograms (kg).

In the Incidental south subcategory, NMFS is considering whether to adjust target catch requirements adjusted as follows: (1) From January through April, one fish per vessel per fishing trip with

at least 1500 lb (680 kg) of target catch, or two fish per vessel per trip with at least 4500 lb (2040 kg) of target catch; (2) From May through December, one fish per vessel per fishing trip with at least 3500 lb (1588 kg) of target catch, or two fish per vessel per trip with at least 6000 lb (2722 kg) of target catch. In the Incidental north subcategory, NMFS is considering whether to adjust target catch requirements to one fish per vessel per fishing trip with at least 3500 lb (1588 kg), or two fish per vessel per trip, with at least 6000 lb (2722 kg) of target catch.

Implement 1996 ICCAT Management Recommendations: NMFS anticipates that quota modifications as well as other management measures will be recommended at the 1996 ICCAT meeting. Management issues that are already on the Commissioners' meeting agenda include recovery plans for Atlantic bluefin tuna and the establishment of specific management measures for yellowfin tuna. While the specific nature of these recommendations will not be known until late November, the recovery plans will be available after meetings of the Standing Committee on Research and Statistics (September 9 - 20, 1996 for bluefin).

Other Comments: NMFS is also soliciting comments on other aspects of tuna regulations, including methods for improving quota monitoring and enforcement. For the latter, NMFS would like comments on the possibility of prohibiting vessels permitted in the Atlantic tuna fishery to carry tuna fishing gear on board on the day prior to the re-opening of the fishery, including no-fishing days or closed season days. Finally, suggestions for alternative measures to extend the fishing season are solicited. No-fishing days and monthly quotas were established for the 1996 fishery, and NMFS solicits proposals on modifications to these and/or alternative methods to extend the season.

Request for Comments

NMFS requests comments on possible changes to the Atlantic tuna regulations as outlined above, in an effort to obtain industry input prior to developing specific proposals for regulatory alternatives. Comments received on this ANPR will assist NMFS in drafting proposed changes to the Atlantic tunas regulations.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 12, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23767 Filed 9–12–96; 12:32 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 181
Tuesday, September 17, 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 AGRICULTURE

Forest Service

Cobalt Helo Salvage Sale; Salmon and Challis National Forests, Lemhi County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to salvage harvest timber and construct helicopter landings in the Panther Creek Watershed located about 35 miles southwest of Salmon, Idaho.

The proposed Cobalt Helo project is located within portions of two inventoried roadless areas, the South Panther Creek (#13504A) and the Deep Creek (#13509) roadless areas, as well as outside roadless areas. The analysis area is immediately adjacent to Panther Creek which is eligible for consideration as a recreational segment in the wild and scenic river system.

This EIS will tier to the Salmon National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired future condition of the area.

The purpose of the proposed action is to salvage merchantable green Douglas-fir and standing dead Douglas-fir trees to reduce the risk of a stand replacing fire; improve residual stand health and vigor by reducing competition for moisture and nutrients through basal area reduction; create conditions favorable for natural Douglas-fir regeneration; and maintain and enhance thermal cover for wildlife in winter range.

DATES: Written comments and suggestions should be received on or before October 17, 1996.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or requests to be replaced on the project mailing list of Debbie Henderson-Norton, District Ranger, Salmon/Cobalt Ranger District, RR 2 Box 600, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Barbara Levesque, EIS Team Leader, Salmon/Cobalt Ranger District, Salmon and Challis National Forests (208–756–5100)

SUPPLEMENTARY INFORMATION: The proposed action would helicopter harvest approximately three million boardfeet of Douglas-fir from 2,378 acres within the 19,300 acre analysis area. Up to sixteen helicopter landings would be constructed. Approximately 1.5 miles of temporary roads would be build from existing roads to designated landing areas. The temporary roads would be obliterated, recontoured, and revegetated upon completion of the timber harvest.

The analysis area is located within the Panther Creek Watershed from Quartz Gulch to Musgrove Creek and is approximately 19,300 acres in size. It includes the lower reaches of Quartz Gulch, Spring, Fawn, Blackbird, Dummy, Copper, Woodtick, Moyer, and Musgrove Creeks. The analysis area also includes the Deep and Napias Creek drainages, from their confluence with Panther Creek to approximately four miles up the drainages. The legal description for the analysis area is T.21N, R.19E., all or portions of sections 9, 11, 12–17, 20–24, 26–28, 32–36; T.20N., R.18E., all or portions of sections 1, 2, 11–13, 23–27, 34–36; and T.20N., R.19E., all or portions of sections, 1, 2, 4–9, 17–19 and 30, BM, ID.

The Salmon Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The proposed timber harvest would occur within Management Allocations 4A, 5A, 3A–5A, 5B, and 3A–4A. Harvest of green and dead timber will occur on suitable ground and harvest of dead timber only will occur on unsuitable ground. Below is a brief description of the applicable management direction.

Management Area 4A—The goals of this area are to provide required forage and cover on big game winter range. Tree stand treatments including clearcut, shelterwood, single tree selection and group selection may be applied to commercial and noncommercial stands, to accomplish specific big game needs (FLRMP, IV–110). Approximately 9,000 acres are within this management area.

Mangement Area 5A—The goals of this area are to produce long-term timber outputs through a high level of investment in regeneration and thinning. Approximately 4,300 acres are within this management area.

Management Area 3A–5A—The goals of this area are to manage aquatic habitat for anadromous fish species and to produce long-term timber outputs through high investments in regeneration and thinning. Approximately 3,000 acres are within this management area.

Management Area 5B—The goals of this area are to meet a medium level of commercial sawtimber output through medium investments in timber management. Timber sales with salvage rights will be used where trees must be removed for site preparation, release, and insect and disease protection. Approximately 2,700 acres are within this management area.

Management Area 3A–4A—The goals within this area are to meet anadromous fish habitat needs and provide for big game habitat on key big game winter range. Timber harvest and management is compatible, but activity, intensity, and timing will be appropriate to meeting habitat quality goals. Approximately 300 acres are within this management area.

The principal environmental issues identified to date are related to the impacts on the Deep Creek Roadless Area; effects on visuals, including viewsheds from the Panther Creek Road; and impacts on big game winter range.

The Forest Service will consider a range of alternatives. One of these will be ‘‘no action’’ alternative in which the proposed action will not be implemented. Another alternative will examine the harvest of timber outside the roadless area but not inside it.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific measures and their effectiveness.

Public participation is an important part of the analysis, commencing with

the initial scoping process (40 CFR 1501.7), which will occur from October of 1996 to November of 1996. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision.

The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Because Panther Creek is an anadromous fishery and the project proposal includes the construction of three landings in the riparian habitat conservation area, consultation with the National Marine Fisheries Service has been initiated with regard to listed species. No public meetings are scheduled.

While public participation in this analysis is welcome at any time, comments received within the 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS. The draft is expected to be filed with the EPA and available for public review in January, 1997. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the Federal Register. The comments will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision. The final EIS is expected to be filed in June, 1997.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Salmon Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; ''Vermont Yankee Nuclear Power Corp. v. NRDC,'' 435 U.S. 519,(1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts; ''City of Angoon v. Hodel,'' 803 F.2d 1016, 1022 (9th Cir, 1986) and ''Wisconsin Heritages Inc. v. Harris,'' 490 F. Supp 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Salmon and Challis National Forest, RR 2 Box 600, Salmon, Idaho 83467.

Dated: September 5, 1996.

George Matejko,

Forest Supervisor.

[FR Doc. 96–23586 Filed 9–16–96; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

West Carroll Watershed, Louisiana

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Deletion of Structural Measures and Closing of the Project.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Watershed Manual (390–V–NWSM, 2nd ed. 12/92), the Natural Resources Conservation Service gives notice of the deletion of all remaining structural measures and closing the West Carroll Watershed Project in West Carroll Parish, Louisiana effective on August 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Donald M. Gohmert, State Conservationist, 3737 Government Street, Alexandria, Louisiana 71302; Telephone 318–473–7760.

Dated: September 5, 1996.

Donald W. Gohmert,

State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 96–23694 Filed 9–16–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Sections 514, 515, 516, and 521 programs authorized under Title V of the Housing Act of 1949, as amended, regarding borrower supervision and servicing for Multi-Family Housing Loans and Grants.

DATES: Comments on this notice must be received by November 18, 1996.

FOR FURTHER INFORMATION CONTACT: MaryAnne Gallaway, Loan Specialist, Multi-Family Housing Portfolio Management, RHS, U.S. Department of Agriculture, Stop 0782, Washington, DC 20250, Telephone (202) 690–0759.

SUPPLEMENTARY INFORMATION:

Title: Security Servicing for Multiple Family Housing Loans.

OMB Number: 0575–0100.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The rural housing loan and grant programs under Sections 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, provide loans and grants to eligible recipients for the development and operation of rural rental housing. These programs are intended to meet the housing needs of persons or families including senior citizens, the handicapped or disabled and domestic farm laborers, having low to moderate incomes.

In order to assist its borrowers to operate and maintain these properties to meet program objectives, improve the Agency's ability to assure the continued

availability of the facilities financed under RHS multiple housing programs and protect the Government's security interest, RHS provides for a variety of servicing actions and guidance to Agency field staff in processing these servicing actions.

RHS will be collecting information from borrowers, borrower representatives, Agency personnel and representatives from other sources of credit. This information is needed by RHS to determine under what circumstances borrowers may need and qualify for the various servicing options available and develop more flexibility in Agency regulations in order to provide borrowers with a wide range of servicing options and increase the opportunity for successfully meeting loan and program objectives.

If not collected, RHS would be unable to provide the widest range of servicing options available and thereby possibly causing borrowers to fail in meeting loan and program objectives and/or protect the security interest of the Government.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.67 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 945.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,587 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Stop 0743, 1400 Independence Ave, SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 9, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–23704 Filed 9–16–96; 8:45 am]

BILLING CODE 3410–07–U

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Rural Rental and Rural Cooperative Housing Loans.

DATES: Comments on this notice must be received by November 18, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Loan Specialist, Multi-Family Housing Processing Division, RHS, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, Washington, D.C. 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Title: Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations.

OMB Number: 0575–0047.

Expiration Date of Approval: March 31, 1997.

Type of Request: Extension of a currently approved information collection

Abstract: The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, is authorized to make loans to finance rural rental housing (RRH) and rural cooperative housing (RCH) complexes and related facilities under Sections 515 and 521 of Title V of the Housing Act of 1949, as amended. The RRH and RCH programs provide affordable rental and cooperative housing for elderly or handicapped persons and families, and other persons and families of low or moderate income in rural areas.

RHS is responsible for ensuring that these federally funded loans are made to eligible applicants for authorized purposes. The information collected is necessary to determine the eligibility of the applicant and the feasibility of the proposed housing. If not collected, the Agency would be providing unauthorized federal assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.29 hours per response.

Respondents: State and local governments, for-profit entities, and nonprofit organizations.

Estimated Number of Respondents: 1,800.

Estimated Number of Responses per Respondent: 15.09.

Estimated Total Annual Burden on Respondents: 143,735.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720–9734.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, STOP 0743, 1400 Independence Avenue, SW, Washington DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 9, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–23705 Filed 9–16–96; 8:45 am]

BILLING CODE 3410–07–U

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: September 27, 1996.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–23867 Filed 9–13–96; 10:02 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1997 American Community Survey—Group Quarter Facility Questionnaire

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before November 18, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20302.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joe Fuller, Bureau of the Census, Room 3757–3, Washington, DC 20230, (301) 457–4283.

SUPPLEMENTARY INFORMATION

I. Abstract

Planning is currently underway for the 1997 American Community Survey (ACS). Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GSs) the opportunity to be interviewed for the ACS. GSs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining information from the GQ will ensure that we include the necessary people residing at the GQ in the 1997 ACS.

Using the ACS–2(GQ) Facility Questionnaire, we will phone a sample of Group Quarters in Franklin County, OH (due to cost and operational restrictions, Franklin County is the only test site). We will verify/update information such as GQ name, address, phone number, and type. We will collect information such as the name of a GQ contact, current/maximum number of residents at the facility, usual length of stay, and availability of facility records. This information will assist in the sampling and enumeration of individuals living in each GQ.

II. Method of Collection

Telephone interviews will be conducted by the Detroit regional office using a paper questionnaire.

III. Data

OMB Number: Not available.

Form Number: ACS–2 (GQ).

Type of Review: Regular Submission.

Affected Public: Individuals, Businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 100 GQs in the 1997 GQ Test Site (Franklin County, OH).

Estimated Time Per Response: 10 minutes (.167 hours).

Estimated Total Annual Burden Hours: 16.7 hours.

Estimated Total Annual Cost: The group quarter facility questionnaire is part of the 1997 American Community Survey, the cost of which is estimated to be 19.4 million dollars.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Section 182.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 11, 1996.

Linda Engelmeier,

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

[FR Doc. 96–23725 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 17, 1996.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1994), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a). We intend

to issue the final results of these reviews not later than August 31, 1997.

Antidumping duty proceedings	Period to be reviewed
ARGENTINA (A–357–810): Oil Country Tubular Goods:	
Other Than Drill Pipe	6/29/95–7/31/96
Drill Pipe	8/11/95–7/31/96
Siderca S.A.I.C.	
BELGIUM (A–423–805): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Fabrique de Fer de Charleroi, S.A.	
BRAZIL (A–351–817): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Usinas Siderurgicas de Minas Gerais, S.A.	
BELGIUM (A–423–602): Industrial Phosphoric Acid	8/1/95–7/31/96
Societe Chimique Prayon-Rupel	
CANADA (A–122–822): Corrosion Resistant Carbon Steel Flat Products	8/1/95–7/31/96
Continuous Colour Coat, Ltd.	
Dofasco, Inc.	
Sorevco, Inc.	
Stelco, Inc.	
CANADA (A–122–823): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Algoma Steel, Inc.	
Manitoba Rolling Mills	
Stelco, Inc.	
CANADA (A–122–814): Pure Magnesium	8/1/95–7/31/96
Norsk Hydro Canada, Inc.	
FINLAND (A–405–802): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Rautauruukki Oy	
GERMANY (A–428–820): Seamless Pipe	1/27/95–7/31/96
Mannesmannrohren-Werke AG	
GERMANY (A–428–816): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
AG der Dillinger Huttenwerke	
ITALY (A–475–814): Seamless Pipe	1/27/95–7/31/96
Dalmine S.p.A.	
ITALY (A–475–703): PTFE Resin	8/1/95–7/31/96
Ausimont SpA	
JAPAN (A–588–835): Oil Country Tubular Goods:	
Other Than Drill Pipe	2/2/95–7/31/96
Drill Pipe	8/11/95–7/31/96
Hebras AS	
NKK Corporation of Japan	
MALAYSIA (A–557–805): Extruded Rubber Thread	8/1/95–7/31/96
Heveafil	
Rubberflex	
Filati	
Rubfil	
MEXICO (A–201–802): Cement	8/1/95–7/31/96
Apasco, S.A. de C.V.	
Cementos de Chihuahua, S.A. de C.V.	
MEXICO (A–201–809): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Altos Hornos de Mexico, S.A. de C.V.	
MEXICO (A–201–817): Oil Country Tubular Goods:	
Other Than Drill Pipe	6/28/95–7/31/96
Drill Pipe	8/11/95–7/31/96
Hysla, S.A. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Tubos de Acero de Mexico, S.A.	
NETHERLANDS (A–421–701): Brass Sheet and Strip	8/1/95–7/31/96
Outokumpu Coper Strip B.V.	
NETHERLANDS (A–421–804): Cold-Rolled Steel Flat Products	8/1/95–7/31/96
Hoogovens Staal BV	
RUSSIA (A–821–803): Titanium Sponge	8/1/95–7/31/96
Avisma Titanium-Magnesium Works	
Berezniki Titanium-Magnesium Works	
Cometals, Inc.	
Interlink Metals & Chemicals, S.A.	
TMC Trading International, Ltd.	
SOUTH KOREA (A–580–815): Cold-Rolled Steel Flat Products	8/1/95–7/31/96
Dongbu Steel Co., Ltd.	
Pohang Iron and Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
SOUTH KOREA (A–580–816): Corrosion-Resistant Steel Flat Products	8/1/95–7/31/96
Dongbu Steel Co., Ltd.	
Pohang Iron and Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
SOUTH KOREA (A–580–825): Oil Country Tubular Goods	2/2/95–7/31/96

Antidumping duty proceedings	Period to be reviewed
SeAH Steel Corporation	
SWEDEN (A–401–805): Cut-to-Length Carbon Steel Plate	8/1/95–7/31/96
Svenskt Stal AB	
THE PEOPLE'S REPUBLIC OF CHINA (A–570–815): Sulfanilic Acid*	8/1/95–7/31/96
China National Chemicals I/E Corp., Hebei Branch (Sinochem Hebei)	
China National Chemical Construction Corp., Bejing Branch	
China National Chemical Construction Corp., Qingdao Branch	
Sinochem Qingdao	
Sinochem Shandong	
Baoding No. 3 Chemical Factory	
Jinxing Chemical Factory	
Zhenxing Chemical Industry Company	
Mancheng Xinyu Chemical Factory, Shijiazhuang	
Mancheng Xinyo Chemical Factory, Bejing	
Hainan Garden Trading Company	
Yude Chemical Industry Company	
Shunping Lile	

*All other exporters of sulfanilic acid from the People's Republic of China are conditionally covered by this review.

Countervailing duty proceedings	Period to be reviewed
BRAZIL (C–351–818): Cut-to-Length Carbon Steel Plate	1/1/95–12/31/95
Usinas Siderurgica de Minas Gerais	
CANADA (C–122–404): Live Swine	4/1/95–3/31/96
Mayfair Colony	
Genetiporc Inc.	
Niverille Hog and Poultry	
National Pig Development (Canada:) Co., Ltd.	
Cornelius Monden	
Larry & Gloria McLeod	
Rein Westerbaan	
Henry Kottelenberg	
Garry Van Loon	
Warren & Richard Stein	
Thames Bend Farms, Ltd.	
Abe Stouffer	
Bob Robson	
Ed & Nancy DeGorter	
Jim & Mary Field	
Bill Collins	
Ralph Henderson	
Clare Martin	
Ben & Helen Varekamp	
Charlie Terpstra	
Andreas & Michael Schertzer	
Peter & Kate Bancroft	
Jack Nethercott	
Allan Faris	
Murray Junker	
Bob & Scott Robinson	
Douglas McLeod	
John Boehm	
Dan Lester	
Ross & Betty Small	
Adrian F. Van Dyk	
Henry DeWolde	
Eric J. Davis	
Fred Lee	
John & Enid Gough	
Henry Van Bilson	
Robin & Donna Carlisle	
Ken & Dave Thompson	
Lynn Sararus	
John Peter Van Haren	
Robert M. Matheson	
Donald J. Dietrich	
George Proctor	
John & Carrie Rutten	
Kurt Keller	
Lars & Olav Natvik	
Wayne Fear	

Countervailing duty proceedings	Period to be reviewed
Richard Stroebel	
Arnold Ypma	
Jim Whitehouse	
Matt Marui	
Brian Vandenbroek	
Jack & Theo Verburg	
Jim F. Hunter	
Wayne Brubacher	
William Kuyvenhoven	
Tim & Rosa Small	
Joe Kolkman	
Ian & Marlene Archibald	
Larry J. Dawson	
Brian Simpson	
Adrian VanHaren	
Ronald Davis	
Rein Minnema	
Carl & Charlotte Mueller	
Henry E.M. Martin	
Arkell Swine Research Station	
Jim Long	
Wood Lynn Farms International Inc.	
John McDonnell	
Jim McDonnell	
Timmerman Farms Ltd.	
Tom & John Archibald	
Quality Swine Corporative or Ontario	
Jim Bloxsidge	
Astoria Swine	
Fairholme Colony	
Stonyhill 93 (Willow Creek Colony)	
Wapoka Creek 95 Ltd.	
Elite Swine Inc.	
Reiter Frams Ltd.	
Shamrock Breeders Group	
Members of the Canadian Pork Council	
CANADA (C–122–815): Alloy Magnesium	1/1/95–12/31/95
Norsk Hydro Canada, Inc. (NHCI)	
CANADA (C–122–815): Pure Magnesium	1/1/95–12/31/95
Norsk Hydro Canada, Inc. (NHCI)	
ISRAEL (C–508–605): Industrial Phosphoric Acid	1/1/95–12/31/95
Rotem Amfert Negev Ltd.	
Haifa Chemicals Ltd.	
MALAYSIA (C–557–806): Extruded Rubber Thread	1/1/95–12/31/95
Heveafil Sdn. Bhd.	
Filmax Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Filati Lastex Elastofibre Sdn. Bhd.	
Rubfil Sdn. Bhd.	
MEXICO (C–201–810): Cut-to-Length Carbon Steel Plate	1/1/95–12/31/95
Altos Hornos de Mexico, S.A. de C.V.	
SWEDEN (C–401–804): Cut-to-Length Carbon Steel Plate	1/1/95–12/31/95
SSAB Svenskt Stal AB	

If requested within 30 days of the date of publication of this notice, the Department will determine, where appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: September 13, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23920 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–085]

Sugar and Syrups From Canada; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

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

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the antidumping order on sugar and syrups from Canada. Based on this information, we preliminarily determine that Rogers Sugar Ltd. (Rogers) is the successor-in-interest to The British Columbia Sugar Refining Company, Limited (BC Sugar) for purposes of determining antidumping liability.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 17, 1996.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Richard Rimlinger, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1980, the Department of Commerce (the Department) published in the Federal Register (45 FR 24126) an antidumping duty order on sugar and syrups from Canada. On August 30, 1996, Rogers submitted a letter stating that Rogers is the successor-in-interest to BC Sugar, and that Rogers Sugar Ltd. should receive the same antidumping duty treatment as is accorded BC Sugar.

Scope of the Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under item numbers 1701.11.0025, 1701.11.0045, and 1702.90.3000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Initiation and Preliminary Results of Review

In a letter dated August 30, 1996, Rogers advised the Department that on June 1, 1995, the former BC Sugar effected a legal name change to Rogers Sugar Ltd. Rogers stated that the former Executive Vice President of BC Sugar is now the President and Chief Operating Officer of Rogers and, further, that the company's management structure is otherwise unchanged. Rogers also stated that the company's three production facilities are unaffected by this change, as are supplier relationships and the company's customer base. Rogers submitted a copy of the document dated June 5, 1995, which evidences this legal name change and which was filed with the Canadian Government to record the name change under the Canada Business Corporations Act.

Thus, in accordance with section 751(b) of the Tariff Act, as amended (the Act), the Department is initiating a changed circumstances review to determine whether Rogers is the successor-in-interest to BC Sugar for purposes of determining antidumping duty liability. In making such a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994) and *Canadian Brass*. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Rogers Sugar Ltd. is the successor-in-interest to BC Sugar. BC Sugar has changed its name to Rogers Sugar Ltd. and the former Executive Vice President of BC Sugar is now the President and Chief Operating Officer of Rogers Sugar Ltd. The company's management structure is otherwise unchanged. Similarly, the company's three production facilities are unaffected by these changes as are supplier relationships and the company's customer base. Thus, Rogers Sugar Ltd. should receive the same antidumping duty treatment as the former BC Sugar, *i.e.*, a zero percent antidumping duty cash deposit rate.

Interested parties are invited to comment on these preliminary results. Any written comments may be submitted no later than September 24, 1996. While, pursuant to 19 CFR § 353.38(c)(ii), the comment period for such administrative reviews is normally 30 days, the circumstances surrounding this changed circumstances review compel the Department to abbreviate the comment period in this case. This changed circumstances review is being conducted to address the legally and factually straightforward issue of a corporate name change. It is critical that the Department make the requested successor-in-interest determination by September 30, 1996. The subject merchandise is subject to a quota program. This determination is crucial for the U.S. Customs Service both in determining quota and whether entries of the subject merchandise by Rogers Sugar Ltd. are subject to the zero antidumping duty rate of BC Sugar. Finally, because interested parties have not requested an administrative review of the antidumping duty order on sugar and syrups from Canada since 1987 and have been aware of the corporate name change since at least October 1995, when Rogers Sugar Ltd. notified interested parties of the name change, the abbreviated comment period will not unduly burden interested parties in this matter.

This initiation of review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CRF 353.22(f)(4).

Dated: September 13, 1996.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 96–23921 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No.96–00004.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to The Foreign Market Search for U.S. Products and Services, Inc., doing business as FMS Exports-Imports, Inc. (''FMS''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (l995).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of

Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products: All products.
2. Services: All services.
3. Technology rights. Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.
4. Export trade facilitation services (as they relate to the export of products, services and technology rights). Export Trade Facilitation Services including professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, FMS may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or nonexclusive licensing and/or sales agreements with Suppliers for the export of Products, Services and/or Technology Rights in the Export Markets;

d. Enter into exclusive and/or nonexclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services and/or Technology Rights for sale and/or licensing in the Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping; and

j. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

l. In engaging in Export Trade Activities and Methods of Operation, FMS will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. FMS will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

3. ''Technology Rights'' means such things as, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

Protection Provided by the Certificate

This Certificate protects FMS and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits FMS from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to FMS by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of FMS or (b) the legality of such business plans of FMS under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)'', 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review is hereby granted to FMS.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: September 11, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–23680 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 091096B]

ICCAT Advisory Committee; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Highly Migratory Species Management Division of National Marine Fisheries Service announces the schedule of regional public meetings to be held this fall.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the meetings.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, (301) 713-2276.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

1. Monday, September 16, 1996, 6 to 10 p.m.—West Palm Beach Omni Hotel, 1601 Belvedere Road, West Palm Beach, FL 33406;
2. Tuesday, September 17, 1996, 6 to 10 p.m.—Quality Inn Midtown, 3900 Tulane Avenue, New Orleans, LA 70119;
3. Friday, October 18, 1996, 6 to 10 p.m.—World Trade Center, 164 Northern Avenue, Boston, MA 02210;
4. Saturday, October 19, 1996, 7 to 10 p.m.—Suffolk Community College, Shinnecock Building, Room S–101, Speonk/Riverhead Road, Riverhead, NY 11901;
5. Monday, October 21, 1996, 6 to 10 p.m.—Quality Inn Lake Wright Convention Center, 6280 Northampton Boulevard, Norfolk, VA 23502;
6. Tuesday, October 22, 1996, 6 to 10 p.m.—Belmar Municipal Courtroom, 601 Main Street, Belmar, NJ 07719; and
7. The annual ICCAT Advisory Committee Meeting will be held in Silver Spring, MD, November 6–8, 1996. There will be an additional opportunity for public comment on international issues on Wednesday, November 6 from 2–6 p.m. at NOAA Building 2, Room 2358, 1325 East-West Highway, Silver Spring, MD 20910.

The following topics may be discussed:

International Issues:

(1) Background on ICCAT
(2) Information on the Advisory Committee and Commissioners
(3) Status of Highly Migratory Species Managed by ICCAT
(4) Topics for the 1996 ICCAT Annual Meeting

Domestic Issues:

(1) Upcoming Highly Migratory Species Rulemaking Actions
(2) Regional Concerns/Issues

The meetings may be lengthened or shortened based on the progress of the discussions. The first half of each meeting will be dedicated to international issues, followed by domestic issues. Representatives from the U.S. ICCAT Advisory Committee and NMFS will be in attendance. For each issue, there will be an opportunity for public comment. The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2347 at least 5 days prior to the meeting date.

Dated: September 10, 1996.

Richard W. Surdi,

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

[FR Doc. 96–23678 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 083096A]

Marine Mammals; Scientific Research Permit (P617)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Madonna L. Moss, 1218 Department of Anthropology, University of Oregon, Eugene, OR 97403–1218, has applied in due form for a permit to take marine mammals for purposes of scientific research.

DATES: Written comments must be received on or before October 17, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (see **SUPPLEMENTARY INFORMATION** for locations).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a permit to salvage carcasses to be processed to obtain osteological specimens (bones and teeth) for the comparative collection of animal bones in the Department of Antropology. Samples from the following species will be obtained from beached/ stranded animals or carcasses left behind by Native Alaskan subsistence hunters: Harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Walrus (*Odobenus rosmarus*), Guadelupe fur seal (*Arctocephalus townsendi*), Northern fur seal (*Callorhinus ursinus*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), Bearded seal (*Erignathus barbatus*), Northern elephant seal (*Mirounga angustirostris*), Ribbon seal (*Phoca fasciata*), Ringed seal (*Phoca hispida*), Larga (spotted) seal (*Phoca largha*), Harbor seal (*Phoca vitulina*) and Sea otter (*Enhydra lutris*). Specimens will be salvaged from carcasses in the Alexander Archipelago of southeast Alaska, Nunivak Island, Alaska, the coast of Oregon, and the California Channel Islands. The application and related documents may be reviewed at the following locations:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, NMFS, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150); and

Director, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203 (1–800/358–2104).

Dated: September 9, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: September 9, 1996.

Margaret Tieger,

Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 96–23768 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

September 11, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated August 1, 1996, effected by exchange of notes dated August 6, 1996, the Governments of the United States and the Former Yugoslav Republic of Macedonia agree to establish limits for wool textile products in Categories 433, 434, 435, 443 and 448, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period October 1, 1996 through December 31, 2000. The terms of the agreement shall be October 1, 1996 through December 31, 1997; January 1, 1998 through December 31, 1998; January 1, 1999 through December 31, 1999; January 1, 2000 through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the current limit for Category 434 and establish limits for Categories 433, 434, 435, 443 and 448 for the first agreement period.

These limits may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing on the date that the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 26165, published on May 24, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 11, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels the directive issued to you on May 21, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile prouducts in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period which began on May 26, 1996 and extends through May 25, 1997.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); the Memorandum of Understanding dated August 1, 1996, effected by exchange of notes dated August 6, 1996, between the Governments of the United States and the Former Yugoslav Republic of Macedonia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on October 1, 1996 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Fifteen-month limit
433	25,000 dozen.
434	12,500 dozen.
435	33,469 dozen.
443	206,250 numbers.
448	75,000 dozen.

Textile products in the aforementioned categories which have been exported to the United States prior to October 1, 1996 shall not be subject to this directive.

Textile products in the aforementioned categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Should the Former Yugoslav Republic of Macedonia become a member of the World Trade Organization, the limits set forth above may be subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[Doc.96–23688 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Ukraine

September 11, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 435 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 57405, published on November 15, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 11, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 8, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of wool textile products in Category 435, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 12, 1996, you are directed to increase the current limit for Category 435 to 91,001 dozen [1], as provided for under the provisions of the Memorandum of Understanding dated May 6, 1995, between the Governments of the United States and Ukraine.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–23687 Filed 9–16–96; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 96–69]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 605–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–69, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-04228/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-69, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $34 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

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

Transmittal No. 96-69

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

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 28 million
Other	$ 6 million
TOTAL	$ 34 million

(iii) Description of Articles or Services Offered:
Three hundred fourteen AIM-9M SIDEWINDER air-to-air missiles, 30 training missiles, missile containers, test sets and support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support.

(iv) Military Department: Navy (ABR)

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

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Egypt - AIM-9M SIDEWINDER Missiles

The Government of Egypt has requested the purchase of 314 AIM-9M SIDEWINDER air-to-air missiles, 30 training missiles, missile containers, test sets and support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support. The estimated cost is $34 million.

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

These missiles will augment the current Egyptian AIM-9L missile inventory and provide added capability for the F-16 aircraft in the air-to-air role. Egypt will have no difficulty absorbing the missiles into its munitions inventory.

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

The prime contractor is the Raytheon Corporation, Andover, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel in Egypt; however, it is estimated that Egypt will require approximately 10 man-years of contractor technical support following delivery of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 96-69

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

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The external view of the AIM-9M (1-2) SIDEWINDER missile is Unclassified and not sensitive. The guidance and control system (GCS) and target detector (TD) are Confidential and contain sensitive state-of-the-art technology.

2. Manuals and technical documents which are necessary for operational use and organizational maintenance have portions that are classified Confidential. Performance and operating logic of the countermeasures circuits are Secret.

3. If a technologically advanced adversary were to obtain the weapon or descriptive material, the information could be used to develop countermeasures that could reduce overall effectiveness.

4. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 96–23745 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–68]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–68, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-04252/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-68 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $66 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

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

Transmittal No. 96-68

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

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 51 million
Other	$ 15 million
TOTAL	$ 66 million

(iii) Description of Articles or Services Offered: One hundred ten MK-46 MOD 5 torpedoes, torpedo exercise heads, air launch accessories, containers, support equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation and other related elements of logistics support.

(iv) Military Department: Navy (AJX)

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

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress:

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

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - MK-46 MOD 5 Torpedoes

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 110 MK-46 MOD 5 torpedoes, torpedo exercise heads, air launch accessories, containers, support equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation and other related elements of logistics support. The estimated cost is $66 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

Taiwan will use these torpedoes as part of the principal armament on its S-70 helicopters thereby maintaining an operational Anti-Submarine Warfare (ASW) capability. Taiwan currently has air launch MK-46 torpedoes in its inventory and will have no difficulty absorbing these additional torpedoes into its armed forces.

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

The prime contractor will be Alliant Techsystems, Incorporated, Hopkins, Minnesota. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23746 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–67]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–67, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-04232/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-67 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $350 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

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

Transmittal No. 96-67

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

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 350 million
TOTAL	$ 350 million

(iii) Description of Articles or Services Offered:
The design, development, integration, ground and flight testing of hardware and software for a Tactical Airborne Surveillance System (TASS); installation of the TASS in a RSAF E-6 aircraft; a KE-3B aircraft, with an on-board surveillance system operational in-country, is to be modified and upgraded to the TASS configuration during scheduled Programmed Depot Maintenance (PDM) in 1999; PDM for E-6 and KE-3B aircraft scheduled to be performed in CONUS; modification of existing in-country ground station(s), TASS equipment trainer, mission scenario generator (simulator), and maintenance test equipment; spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical documentation including flight/operator/maintenance manuals, modification/construction of facilities, U.S. Government and contractor engineering and support services and other related elements of logistics necessary to provide full program support.

(iv) Military Department: Air Force (YBW Amendment #3)

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

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Saudi Arabia - Tactical Reconnaissance Aircraft

The Government of Saudi Arabia has requested the purchase of services related to the design, development, integration, ground and flight testing of hardware and software for a Tactical Airborne Surveillance System (TASS); installation of the TASS in a RSAF E-6 aircraft; a KE-3B aircraft, with an on-board surveillance system operational in-country, is to be modified and upgraded to the TASS configuration during scheduled Programmed Depot Maintenance (PDM) in 1999; PDM for E-6 and KE-3B aircraft scheduled to be performed in CONUS; modification of existing in-country ground station(s), TASS equipment trainer, mission scenario generator (simulator), and maintenance test equipment; spare and repair parts, support and test equipment, personnel training and training equipment, publications and technical documentation including flight/operator/maintenance manuals, modification/construction of facilities, U.S. Government and contractor engineering and support services and other related elements of logistics necessary to provide full program support. The estimated cost is $350 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services.

This purchase will enable Saudi Arabia to enhance and strengthen its defensive capabilities as well as increase interoperability with U.S. forces. Saudi Arabia will have no difficulty absorbing this equipment into its armed forces.

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

The prime contractor will be E-Systems (a Raytheon Co.), Greenville, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of U.S. Government personnel and contractor representatives to Saudi Arabia. After the program is implemented and following consultations between the USAF/U.S. contractors and RSAF program representatives, specific numbers and types of qualified support personnel will be identified.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23747 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–66]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–66, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-02689/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $303 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

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

Transmittal No. 96-66

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

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 303 million
TOTAL	$ 303 million

(iii) Description of Articles or Services Offered:
Phase III Product Improvement Program (PIP) for the HAWK missile system ground equipment to include modification kits, kit installation and system integration/checkout, re-manufacture of selected hardware, systems engineering, system software, U.S. Government and contractor engineering and logistics support services, spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, integration of modified equipment with existing air defense systems, and other related elements of logistics support.

(iv) Military Department: Army (UQU)

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

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

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Egypt - Modification of HAWK Missile System Ground Equipment

The Government of Egypt has requested the purchase of the Phase III Product Improvement Program (PIP) for the HAWK missile system ground equipment to include modification kits, kit installation and system integration/checkout, re-manufacture of selected hardware, systems engineering, system software, U.S. Government and contractor engineering and logistics support services, spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, integration of modified equipment with existing air defense systems, and other related elements of logistics support. The estimated cost is $303 million.

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

The upgraded HAWK missile system ground equipment will support Egypt's continuing efforts to modernize and enhance the operational capability of its HAWK missile air defense system. The modification of these ground systems will also ensure commonality of logistics support with U.S. forces equipment. Egypt will have no difficulty absorbing these hardware changes into its air defense system.

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

The prime contractor will be the Raytheon Company, Andover, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel to Egypt; however, approximately 10 contractor representatives of various technical skills will be required in-country during the delivery, installation, and check-out of the upgraded HAWK missile system ground equipment.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23748 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–62]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–62, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-04223/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-62, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $500 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

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

Transmittal No. 96-62

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

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$ 5 million
Other	$495 million
TOTAL	$500 million

(iii) Description of Articles or Services Offered: Logistics support of four KC-135A aircraft during rework, overhaul and modification to the KC-135R tanker configuration to include repair, overhaul and/or replacement of aircraft components, parts and assemblies; modification, upgrade and installation of aircraft avionics equipment (includes embedded Global Positioning System hardware); aircraft engine rework/overhaul, provide/install wingtip refueling pods; spare and repair parts, personnel training and training equipment, the analysis, identification and procurement of maintenance facility requirements necessary to establish a KC-135R tanker aircraft depot level maintenance capability in country to include maintenance facility layout, shop support and test equipment, tooling, publications and technical data, calibration equipment, a U.S. Government Mobile Training Team (MTT) and other related elements of program support.

(iv) Military Department: Air Force (NCK, KBU, and GEB)

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

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

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Singapore - Logistics Support for KC-135A Aircraft Modification Program

The Government of Singapore has requested logistics support of four KC-135A aircraft during rework, overhaul and modification to the KC-135R tanker configuration to include repair, overhaul and/or replacement of aircraft components, parts and assemblies; modification, upgrade and installation of aircraft avionics equipment (includes embedded Global Positioning System hardware); aircraft engine rework/overhaul, provide/install wingtip refueling pods; spare and repair parts, personnel training and training equipment, the analysis, identification and procurement of maintenance facility requirements necessary to establish a KC-135R tanker aircraft depot level maintenance capability in country to include maintenance facility layout, shop support and test equipment, tooling, publications and technical data, calibration equipment, a U.S. Government Mobile Training Team (MTT) and other related elements of program support. The estimated cost is $500 million.

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

Singapore needs this logistics support to ensure the KC-135R tanker aircraft program, reported to Congress under Congressional notification Transmittal #96-33 on 15 April 1996, will provide the long-term in-flight refueling capability necessary to sustain F-16 aircraft air crew training requirements. Singapore will have no difficulty absorbing this support material into its inventory.

The sale of logistics support material and services will not affect the basic military balance in the region.

The principal contractors for the program will be Boeing Military Airplane Company, Wichita, Kansas and CFM International, Cincinnati, Ohio. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this program will not require the assignment of any additional U.S. Government personnel or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23749 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–61]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–61, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-04216/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-61 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $53 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Separate Cover:
Classified Annex

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

Transmittal No. 96-61

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

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$40 million
Other	$13 million
TOTAL	$53 million

(iii) Description of Articles or Services Offered:
One hundred AIM-120 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (YGQ)

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

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Korea - AIM-120 Advanced Medium Range Air-to-Air Missiles

The Government of Korea has requested the purchase of 100 AIM-120 Advanced Medium Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $53 million.

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

The sale of these missiles will augment current procurement programs, provide an opportunity for Korea to strengthen its air-to-air defensive capability and enhance interoperability with U.S. forces. Korea, which already has AMRAAM in its inventory, will have no difficulty absorbing these additional missiles.

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

The principal contractors will be Hughes Missile Systems Company, Tucson, Arizona or Raytheon Company, Bedford, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23750 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

[Transmittal No. 96–60]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

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

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96–60, with attached transmittal and policy justification pages.

Dated: September 12, 1996.

BILLING CODE 5000–04–M

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

05 SEP 1996

In reply refer to:
I-02700/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-60, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $176 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

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

Transmittal No. 96-60

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

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$176 million
TOTAL	$176 million

(iii) Description of Articles or Services Offered:
A Royal Saudi Naval Forces (RSNF) personnel training program in CONUS and in-country to include pilot training/qualification, operator and maintenance training for Marine force equipment and fast patrol boats, professional military education assistance for the RSNF Naval Academy and general courses of instruction in the English language, fleet training center operations, curriculum development, ADP/computers and safety.

(iv) Military Department: Navy (TBW)

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

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

(vii) Date Report Delivered to Congress: 05 SEP 1996

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

POLICY JUSTIFICATION

Saudi Arabia - Navy Personnel Training

The Government of Saudi Arabia has requested a Royal Saudi Naval Forces (RSNF) personnel training program in CONUS and in-country to include pilot training/qualification, operator and maintenance training for Marine force equipment and fast patrol boats, professional military education assistance for the RSNF Naval Academy and general courses of instruction in the English language, fleet training center operations, curriculum development, ADP/computers and safety. The estimated cost is $176 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services.

The Royal Saudi Naval Forces need this training program to ensure a well trained cadre of personnel will be available in the future to operate and maintain military equipment of U.S. origin.

The training services and support will be provided by U.S. Government and U.S. contractor instructor personnel who provide similar services to the U.S. forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this program will require the assignment of approximately 100 U.S. military, government and government contractor personnel to Saudi Arabia on an annual basis over a three year period.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 96–23751 Filed 9–16–96; 8:45 am]
BILLING CODE 5000–04–C

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at, 12:00 p.m., Thursday 26 September and 9:00 Friday, 27 September 1996.

ADDRESSES: The meeting will be held at Wright Laboratory, Building 620 AAO Conference Room, Wright-Patterson AFB, OH.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified groups program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: September 10, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23739 Filed 9–16–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: NOTICE.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 1 October 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: September 10, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23740 Filed 9–16–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 25 September 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d) 1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: September 10, 1996.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23741 Filed 9–16–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Technology Issues

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Technology Issues will meet in closed session on September 19, 1996 at the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of

Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will work with the JCS Chairman and Vice Chairman in support of the Expanded JROC activities. The JRO has sponsored assessments of U.S. capabilities to conduct various kinds of military operations. These Joint Warfighting Capability Assessments (JWCA) are key to determining the Chairman's position concerning plans and programs. The Task Force should review the JWCA process and recommend ways in which the process might be improved.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23742 Filed 9–16–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Image-Based Automatic Target Recognition

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on October 16–17 at Science Applications International, McLean, Virginia; and on November 6–7, 1996 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 12, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23743 Filed 9–16–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Intent To Prepare Environmental Impact Analyses for Defense Base Realignment and Disposal Actions Resulting From the 1995 Commission's Recommendations

AGENCY: Department of Defense, United States Army.

ACTION: Correction notice.

SUMMARY: In previous Federal Register notice (60 FR 49263–49264) of September 22, 1995, the following corrections should be made:

On page 49263 in column three, paragraph a(2) indicates that an environmental assessment is planned for Detroit Arsenal, Michigan, for receiving automotive materiel management functions from Aviation-Troop Command, St. Louis, Missouri, to align with Tank-Automotive and Armaments Command. This relocation is below the threshold requiring an environmental assessment and is covered by a Department of Army categorical exclusion which will be analyzed within a Record of Consideration.

On page 49263 in column three, paragraph a(4) indicates that an environmental assessment is planned for Fort Bliss, Texas, for receiving U.S. Army Test and Experimentation Center missions and functions from Fort Hunter Liggett, California. Department of the Army approved a plan on July 31, 1996, to inactivate the U.S. Army Test and Experimentation Center in place. Therefore, the environmental analysis on its relocation is canceled.

On page 49264 in column one, paragraph c(2) indicates that an environmental assessment is planned for property disposal at Big Coppitt Key, Florida. The property has since been identified for transfer to the Department of the Navy. The transfer of real property administrative control to another military department is covered by a Department of Army categorical exclusion which will be analyzed within a Record of Consideration.

On page 49264 in column one, paragraph c(22) indicates that an environmental assessment is planned for property disposal at Senena Army Depot, New York. We have reassessed our initial determination and now plan to analyze property disposal at this site in an environmental impact statement.

On page 49264 in column one, paragraph c(24) indicates that an environmental assessment is planned for property disposal at Sudbury Training Annex, Massachusetts. The property has since been identified for transfer to other federal agencies. The transfer of real property administrative control to other federal agencies is covered by a Department of Army categorical exclusion which will be analyzed within a Record of Consideration.

On page 49264 in column one, paragraph d(2) indicates that an environmental impact statement is planned for property disposal at Defense Distribution Depot, Memphis, Tennessee. We have reassessed our initial determination and now plan to analyze property disposal at this site in an environmental assessment.

FOR FURTHER INFORMATION CONTACT: For further information regarding these environmental impact analyses, please contact the Public Affairs Office at the affected installations or the appropriate higher headquarters as indicated below:

INSTALLATION—(AREA CODE) COMMERCIAL #

Big Coppitt Key, FL—(404) 669–5607/5686

Defense Distribution Ctr., Memphis, TN—(901) 775–6372

Detroit Arsenal, MI—(810) 574–6584

Fort Bliss, TX—(404) 669–5607/5686

Seneca Army Depot, NY—(607) 869–1235

Sudbury Training Annex, MA—(404) 669–5607/5686

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 96–23690 Filed 9–16–96; 8:45 am]

BILLING CODE 3710–08–M

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Disposal and Reuse of Fort Ord, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Final Supplemental Environmental Impact Statement (FSEIS) for disposal of certain excess

property at Fort Ord, California. The FSEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the FSEIS have been forwarded to various federal, state and local agencies, and predetermined interested organizations and individuals.

DATES: This FSEIS will be available to the public for 30 days, after which the Army will prepare a Record of Decision for the Army action.

ADDRESSES: Copies of the Final Supplemental Environmental Impact Statement can be obtained by writing or calling Mr. Bob Verkade, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–7423, fax (916) 557–5307.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 96–23691 Filed 9–16–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting 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 November 18, 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 Acting 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: September 11, 1996.

Kent H. Hannaman,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: New.

Title: The Library Cooperatives Survey (LCS).

Frequency: Pretest and One Universe survey.

Affected Public: Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:
Responses: 1,201.
Burden Hours: 400.

Abstract: This survey will be used to request information from library cooperatives. The LCS survey data will be used along with the Public Libraries Survey (PLS) and the State Libraries Agency Survey (STLA) to obtain a more complete picture of library services in the nation. LCS descriptive data will be aggregated and published at the national and state levels. Descriptive data will also be accessible in electronic files by each library cooperative organization and by state.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Assessment of the Role of School and Public Libraries in Support of the National Educational Goals.

Frequency: One Time.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting Burden and Recordkeeping:
Responses: 3,100.
Burden Hours: 2,583.

Abstract: The library and education communities need to know more about the role of libraries in supporting education in order to plan for and direct resources. The respondents are librarians in public libraries and public and private schools.

[FR Doc. 96–23722 Filed 9–16–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision regarding DOE's proposal to establish a production capability for molybdenum-99 (Mo-99) and related medical isotopes. DOE has decided to proceed with the proposed action using the preferred alternative identified in the Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes Environmental Impact Statement (DOE/EIS–0249F). The selected facilities are located at Sandia National Laboratories in Albuquerque, New Mexico (SNL/NM), and Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Further information on the environmental impact statement (EIS) can be obtained by contacting: Mr. Wade P. Carroll, MIPP EIS Document Manager, Office of Nuclear Energy, Science and Technology, NE–70, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–7731; facsimile: (301) 903–5434.

General information on the DOE National Environmental Policy Act (NEPA) process can be obtained by contacting: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: (202) 586–4600, or leave message at (800) 472–2756.

For general information on the DOE isotope production program, please contact: Mr. Owen W. Lowe, Associate Director for Isotope Production and Distribution, NE–70, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–5161.

SUPPLEMENTARY INFORMATION: DOE has prepared this Record of Decision pursuant to the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508) and DOE regulations implementing NEPA (10 CFR Part 1021). This Record of Decision is based on the final EIS, Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes Environmental Impact Statement (DOE/EIS–0249F). The Notice of Availability of this final EIS was published in the Federal Register on May 3, 1996 (61 FR 19931). Several comment letters, discussed in the Comments on the Final EIS section of this document, were received after the final EIS was published. These comments were taken into consideration in preparing this Record of Decision.

DOE initially prepared, and released for public comment, a draft environmental assessment (EA) dated February 7, 1995, on the proposed action of producing medical isotopes using the Annular Core Research Reactor (ACRR) and the adjacent Hot Cell Facility at SNL/NM for target irradiation and isotope extraction, and the Chemistry and Metallurgy Research Facility at LANL in New Mexico for target fabrication. The public review and comment period for the draft EA ended on May 1, 1995. Based on the draft EA and comments received, DOE decided to prepare an EIS. The Notice of Intent to prepare the EIS was published in the Federal Register on July 6, 1995 (60 FR 35191). The draft EIS was published in December 1995, and the Notice of Availability of the draft EIS was published in the Federal Register on December 22, 1995 (60 FR 66542).

Background

For more than 40 years, DOE and its predecessor agencies have produced and distributed isotopes through DOE's national laboratories. In 1990, Congress established the Isotope Production and Distribution Program (IPDP), combining under one program all DOE isotope production activities.

Among other activities, IPDP has responsibility for ensuring a stable supply of Mo-99 to the U.S. medical community. Mo-99 is a radioactive isotope of molybdenum that results from the fission of uranium atoms or from the irradiation of stable isotopes of molybdenum, such as Mo-98. Technetium-99m (Tc-99m) is a decay product of Mo-99. Approximately 38,000 diagnostic procedures involving radioactive isotopes are performed each day in the United States. Most of these procedures use Tc-99m. Diagnoses using Tc-99m make it possible to define internal conditions of the body that often cannot be determined through any other means except invasive surgery. The short life of Tc-99m minimizes the radiation dose received by the patient. Because these isotopes are highly perishable with short lifetimes (the half-lives of Mo-99 and Tc-99m are 66 hours and 6 hours, respectively), the need to ensure a stable, continuous supply for medical use is critical. The U.S. medical community accounts for about 60 percent of the worldwide demand for Mo-99/Tc-99m, yet there is no current domestic production source for these isotopes.

Prior to 1989, Mo-99 was produced in the United States by a single supplier, Cintichem, Inc. Cintichem produced Mo-99 by irradiating uranium deposited on the inside of stainless steel tubes, called targets, in a reactor and then chemically separating the Mo-99 from the targets and purifying it. In 1989, Cintichem discontinued operation of its production reactor. Since then, the United States has relied on production reactors in Canada for its supply of Mo-99.

Until 1993, two Canadian reactors, operated by Atomic Energy of Canada Limited (AECL) at the Chalk River site (located about 100 miles from Ottawa, Canada), were available to produce Mo-99 through the irradiation of targets. AECL extracted the Mo-99 from the targets and provided it to Nordion International. Nordion then purified the Mo-99 and shipped it to radiopharmaceutical manufacturers. In 1993, one of the Canadian reactors was permanently shut down leaving only one operating reactor, the National Research Universal (NRU) reactor. A shutdown of this single remaining reactor would jeopardize the U.S. supply of Mo-99. In April 1995, this reactor suffered an unplanned shutdown for four days. European sources were able temporarily to increase their production enough to cover the European demand normally supplied by Nordion, and Nordion had sufficient product in process to meet the U.S. demand during this brief period. However, shortages would have begun in the United States had the Canadian reactor remained out of service for only one or two more days.

Nordion has announced its intention to build two modern ten-megawatt reactors to replace the NRU reactor. However, the earliest that one of the new plants could be producing Mo-99 is mid-1999. Thus, a window of vulnerability for the U.S. medical community exists until a reliable backup source of Mo-99 is available. In addition, AECL has committed to the Canadian nuclear regulatory authority, the Atomic Energy Control Board, to shut down the NRU reactor in the year 2000. This action would extend the dependence of the United States on a single source of supply if only one new Canadian reactor were available at that time and would create immediate shortages if no new reactors were ready to operate at that time.

As a general policy, DOE would favor medical isotope production by the private sector. However, because the medical radioisotope market is influenced by forces other than traditional market forces (e.g., support from national governments), full-cost recovery of investment is often not possible. In addition to these considerations, the uncertainties and liabilities of constructing and operating a nuclear reactor have prevented and will likely continue to prevent private companies from providing a U.S. domestic source of Mo-99 in the near term. In the 1992 hearings on the condition of the IPDP before the House Environment, Energy, and Natural Resources Subcommittee of the Committee on Government Operations, testimony addressed the danger of U.S. dependence upon a single foreign source for its supply of the critical Mo-99 radioisotope and reaffirmed the need for DOE to become a Mo-99 supplier. Congress provided $7.6 million for this effort for fiscal year 1995, and $12 million for fiscal year 1996. In its report (S. Rep. No. 103–291) accompanying the Energy and Water Development Appropriations Act, 1995, the Senate Committee on Appropriations noted ''that DOE is taking steps to * * * produce molybdenum-99 and related medical isotopes to ensure that there are no inadequacies of supply for domestic use. The committee supports this effort and wishes to be kept informed as DOE progresses.''

Production Processes

Mo-99 can be produced by different processes. However, only two processes have been approved by the U.S. Food and Drug Administration (FDA) for Mo-99 sold in the United States: the proprietary process used by Nordion and the Cintichem process. DOE owns the rights to the Cintichem process. Both processes produce Mo-99 in a reactor. The Nordion process results in substantial quantities of liquid radioactive waste; the Cintichem process produces largely solid radioactive waste that is much easier to manage and dispose of.

In November 1991, DOE purchased the Cintichem technology, equipment, and the FDA Drug Master Files for the production of Mo-99, iodine-125 (I-125), iodine-131 (I-131), and xenon-133 (Xe-133) for $750,000 plus an agreement to pay Cintichem a four percent royalty on the first five years of sales of Mo-99 and the other isotopes produced by DOE using the Cintichem technology. In addition, DOE agreed to accept the spent nuclear fuel from the Cintichem reactor for disposal.

Related Isotopes

The proposed action analyzed in the EIS is the production of Mo-99 and related isotopes. While the focus of the proposed project is the production of Mo-99, related isotopes, I-125, I-131, and Xe-133, could be produced at any of the alternative production sites to offset the costs of Mo-99 production. Isotopes I-125 and I-131 are used in the treatment of thyroid conditions such as Graves' disease. Xe-133 is used in the diagnosis of lung maladies. As noted above, DOE purchased the rights to produce each of these isotopes using Cintichem's technology along with the right to produce Mo-99. Each of these isotopes can be made at any of the reactors under consideration and each can be processed, packaged, and distributed by the same production team. I-131 and Xe-133 are essentially byproducts generated during the processing of Mo-99. I-125 is produced by irradiating a separate target containing nonradioactive xenon-124 in the same reactor. This isotope would be extracted separately and in a manner that would not interefere with Mo-99 processing.

DOE Mo-99 Project History

In 1991, in response to the shutdown of the Cintichem reactor, DOE identified the Omega West Reactor at LANL as the proposed facility to provide a backup supply of Mo-99. In December 1992, however, the Omega West Reactor experienced an unplanned shutdown. While the reactor was shut down, a leak in the primary cooling system was identified, and the reactor was not restarted.

The search for an alternate facility to produce Mo-99 led to the identification of ACRR at SNL/NM as a suitable candidate for Mo-99 production. Within DOE, ACRR and its associated Hot Cell Facility are managed by the Office of Defense Programs to provide for defense research needs. Defense-related experiments conducted in ACRR were completed in 1995. As mentioned previously, DOE issued a draft EA for public comment on the proposed action of producing medical isotopes using ACRR and its associated Hot Cell Facility at SNL/NM and the Chemistry and Metallurgy Research Facility at LANL. Based on the draft EA and comments received, DOE decided to prepare an EIS.

Mo-99 Market

The current U.S. demand for Mo-99 is about 3,000 6-day curies per week. A 6-day curie is defined as the amount of product, measured in curies, remaining 6 days after the product arrives on the radiopharmaceutical manufacturer's dock. The radiopharmaceutical manufacturers also require that specific activity of the product be at least 250 curies of activity per gram of aqueous molybdenum solution at delivery.

The current supply of Mo-99 from Canada would be interrupted if the NRU reactor experiences a shutdown of approximately five days or longer for any reason. The NRU reactor must operate continuously for 12 or 13 days of each 15-day operating period in order to maintain a continuous supply of Mo-99. Down time of 2 to 3 days every 15 days is normally required for maintenance, repairs, and target replacement. For many years, the NRU reactor has met this operating schedule to supply the U.S. and Canadian demands for Mo-99 and to ship Mo-99 to numerous other countries.

If the NRU reactor were to shut down for reasons other than routine maintenance, it might not be restarted. The reactor was commissioned in 1957, and an aggressive maintenance program is in place to keep it operating. However, no plans exist to continue operation beyond the year 2000 because of the reactor's age and lack of storage capacity for waste generated by the isotope separation process. Any major problem at the reactor requiring significant time and resources to repair would probably result in a permanent shutdown, terminating this source of supply.

In the mid 1980s, Nordion and AECL began the planning and construction of a new isotope production and research reactor, Maple X, to replace the NRU reactor. However, AECL decided to halt construction of the Maple X reactor in 1993 for economic reasons. Nordion's parent company, MDS Health Group Ltd. of Canada, subsequently filed a breach of contract lawsuit against AECL, and the two sides agreed to arbitration hearings to resolve the dispute. The dispute has been resolved and Nordion apparently now plans to contract with AECL for the construction and operation of two new reactors (Maple I, a continuation of the Maple X project, and Maple II) dedicated to isotope production, and a radiochemical separation facility. These facilities would use a Mo-99 production and separation process similar to the Cintichem process to reduce the amounts of radioactive waste generated. Nordion recently announced that it will restart project planning and design activities for the two reactors and the radiochemical separation facility. The sale in the United States of Mo-99 produced at the Maple reactor complex cannot begin until at least one reactor and the radiochemical separation facility are completed and licensed. In addition, FDA must approve the product before Nordion can supply it to U.S. pharmaceutical companies.

Nordion currently plans to build two reactors. However, if only one reactor is built, the situation of dependence on a sole source of supply would remain unchanged for nuclear medicine physicians in the United States as well as the related vulnerability to an interruption of supply. Nordion and AECL estimate that the time required to complete the necessary environmental and construction permitting process, to construct and commission one of the reactors, and to construct the radiochemical separation facility is about three years from the time the project is resumed. Construction and commissioning of the second reactor, if pursued, would proceed simultaneously and would be completed about one year after the first reactor is commissioned. Full-scale Mo-99 production and its sale in the United States would probably require an additional several months at each of the reactors.

Nordion has established a European subsidiary by acquiring the radiopharmaceutical department of the Institut National des Radio-elements (IRE) in Fleurus, Belgium, but IRE (fully owned by the Belgian Federal Government) remains the owner of Mo-99 production. IRE and Nordion have signed a mutual Mo-99 backup

agreement to avoid a complete shortage of Mo-99 in case of an unscheduled shutdown of the Canadian NRU reactor. DOE has been informed that the current contractual backup arrangement requires IRE to supply Nordion with the excess capacity of its facility for up to eight weeks in the event of a shutdown.

It is unlikely, however, that Nordion could immediately respond to a U.S. shortage of Mo-99 through its backup arrangement with IRE. Although IRE has informed DOE that IRE has a sufficient number of certified transport casks to ship the Mo-99 from Europe directly to the U.S. radiopharmaceutical companies, Mo-99 from the Belgian source has never been sold in the United States. Use of IRE's Mo-99 in the United States would depend on IRE's ability to obtain FDA approval. IRE submitted a Drug Master File to the FDA in 1991, and Mo-99 samples were sent to the U.S. radiopharmaceutical companies (DuPont-Merck, Amersham Mediphysics, and Mallinckrodt Medical) so that they could support IRE's request for FDA approval. However, the FDA approval process on the submittal has proceeded slowly because IRE has no established U.S. customers.

Mallinckrodt Medical is currently working with the High Flux Reactor (HFR) at Petten in the Netherlands to secure a backup supply in 1996 for its European needs and for its U.S. operations, dependent upon FDA approval. While production at the Petten HFR could be increased beyond European needs, it would not be expected to meet the U.S. demand if the supply from Nordion is interrupted.

Mo-99 is produced in numerous other countries. These include reactor production facilities in Australia, Indonesia, Japan, Peru, Argentina, Russia, China, and South Africa. For the most part, they are small, government-run production facilities, and the Mo-99 is produced for local use rather than international export. None of these foreign sources, most running sporadically, could meet a significant portion of the U.S. demand for Mo-99/Tc-99m generators. Moreover, the foreign governments are reluctant to meet stringent FDA requirements for export to the United States. Transportation difficulties also limit the ability of foreign producers to supply Mo-99 to the United States.

Thermo Technology Ventures, Inc., a U.S. company, is investigating a concept for direct production of Tc-99m using small particle accelerators. If successful in developing this concept and financing the operation of numerous facilities, Thermo Technology Ventures might be able to supply a significant quantity of Tc-99m to the U.S. medical community in the future.

Proposed Action

The proposed action is for DOE to establish, as soon as practicable, a domestic U.S. production capability that would ensure a reliable supply of Mo-99 and related medical isotopes (I-125, I-131, and Xe-133) for use by the U.S. medical community. DOE's near-term goal is to provide a backup capability to Canadian production by supplying a baseline production level of 10 to 30 percent of current U.S. demand for Mo-99 with the capability to increase production rapidly to supply 100 percent of the U.S. demand should the Canadian source be unavailable. The baseline production level would serve to maintain the capabilities of the facilities and staff to respond on short notice to supply the entire U.S. demand on an as-needed basis.

Each of the alternatives, described in the next section, for accomplishing the proposed action would use the Cintichem process for the production of Mo-99 and related isotopes. A brief description of the steps in the process follows.

As the initial step in the proposed production of Mo-99, targets would be fabricated, tested, and shipped to the reactor facility for irradiation. Targets would be manufactured by coating the inner walls of stainless steel tubes with highly enriched uranium oxide and then sealing the ends of the tubes with custom fittings.

At the reactor facility, the targets would be irradiated for several days. Because Mo-99 decays at the rate of about one percent per hour, all steps following irradiation of the targets must be expedited. Upon removal from the reactor, the irradiated targets would be transferred in a shielded cask to an appropriate hot cell facility, preferably located adjacent to or near the reactor facility. Mo-99, I-131, and Xe-133 would be extracted from the fission product inventory by chemical dissolution and precipitation reactions within the hot cells. The isotopes would be further refined and would undergo strict quality control procedures to meet FDA standards.

The production of I-125 requires the irradiation of a different type of target than that used for the production of Mo-99. These targets would be irradiated in the same reactor selected for Mo-99 production, but the targets would be processed separately and in a manner that would not interfere with Mo-99 processing.

The isotopes would be packaged in Department of Transportation-approved packaging for shipment by air on a daily basis to any of the three currently known potential customers: DuPont-Merck in Boston, Massachusetts; Amersham Mediphysics in Chicago, Illinois; and Mallinckrodt Medical in St. Louis, Missouri; or to Nordion International in Canada for final processing and distribution. Air express class shipments would be used.

The radioactive waste generated during the production of the medical isotopes would be primarily low level waste. This waste and the spent nuclear fuel from the reactor would be managed, stored, and eventually disposed of in accordance with applicable regulatory requirements.

Alternatives Considered

This section describes the alternatives evaluated in the EIS.

1. No Action

Consideration of the No Action alternative is required by CEQ Regulations, and provides a baseline for comparison with the action alternatives. If the No Action alternative were selected, there would be no environmental impacts in the United States due to the production of Mo-99. However, the United States would continue to be vulnerable to a Mo-99 supply shortage due to the future uncertainties faced by the sole Canadian supplier.

2. Preferred Alternative—Annular Core Research Reactor and Hot Cell Facility at Sandia National Laboratories/New Mexico and Chemistry and Metallurgy Research Facility at Los Alamos National Laboratory

Under this alternative, DOE would use the Chemistry and Metallurgy Research Facility to fabricate the targets containing highly enriched uranium. The targets would be shipped to the ACRR at SNL/NM for irradiation, and the irradiated targets would be processed in the adjacent Hot Cell Facility. Low level radioactive wastes from target fabrication at LANL would be disposed of on site. Low level radioactive wastes from the Mo-99 production at SNL/NM would be transported to the Nevada Test Site for disposal. Spent nuclear fuel generated during the isotope production activities would first be stored on site and later shipped to the Idaho National Engineering Laboratory (INEL) for storage in accordance with the Records of Decision on the DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory

Environmental Restoration and Waste Management Programs Environmental Impact Statement (SNF PEIS) (DOE/EIS–0203–F).

To produce Mo-99 and related medical isotopes under this alternative, modifications would be required to the Chemistry and Metallurgy Research Facility, the ACRR, and Hot Cell Facility. The modifications required to fabricate targets at the Chemistry and Metallurgy Research Facility are relatively minor. Some interior walls would be removed, doors would be relocated, and glove boxes with filtered exhaust systems would be installed.

The ACRR is operational but has historically operated in a pulsed mode or in a steady-state mode for about a week at a time, whereas continuous operation would be required for isotope production. To be able to meet 100 percent of the U.S. demand for Mo-99, the reactor would be modified to allow steady-state operation at four megawatts and to allow irradiation of a sufficient number of targets. The required modifications include installation of heat exchangers and cooling towers, removal of a stainless steel tube from the center of the reactor core, and various hardware upgrades. In addition, an air lock would be installed to minimize airborne releases during the transfer of irradiated targets, and ventilation and electrical systems would be upgraded. Following each modification to the reactor, a readiness assessment would need to be satisfactorily completed for the reactor to continue operations. When all the reactor modifications were completed, a determination of readiness would be made to establish whether there is a need for an operational readiness review.

The existing Hot Cell Facility adjacent to the ACRR, with the addition of more shielding, could be used to produce approximately 10 percent of the current U.S. demand for Mo-99 on a steady-state basis or 30 percent of the demand for short periods. To meet greater than 10 percent of U.S. demand on a continuous basis, a new hot cell consisting of five workstations would be constructed within the existing Hot Cell Facility. In addition, the Hot Cell Facility floor plan would be reconfigured, and the facility ventilation system would be upgraded.

As noted above, the ACRR is currently managed by DOE's Office of Defense Programs. If responsibility for the ACRR is transferred to the DOE Office of Nuclear Energy, Science and Technology, then the Office of Defense Programs has expressed an interest in retaining the right to have the reactor available to support defense missions in times of national emergency to address security concerns. Under such an arrangement, the ACRR would technically be subject to recall for defense-related activities if required. DOE has determined that the probability of recalling the ACRR to support Defense Programs' needs is so remote as not to preclude the ACRR as an alternative. Also, if it were recalled to support defense-related activities, the reactor could be reconverted for the production of Mo-99 in a week, if necessary.

On April 15, 1996, the Pueblo of Isleta and the Southwest Research and Information Center filed a complaint against DOE in the United States District Court for the District of New Mexico challenging DOE's lack of a sitewide EIS for SNL/NM and continued reliance upon the 1977 sitewide EA. *Pueblo of Isleta v. Dep't of Energy,* No. 96–0508 (D. N.M. filed Apr. 15, 1996). Plaintiffs allege that NEPA documents prepared at SNL/NM since 1977 do not adequately analyze the cumulative environmental impacts of other past, present, and reasonably foreseeable actions at SNL/NM and seek to enjoin DOE from tiering any projects from the 1977 EA. The complaint lists the Draft Medical Isotopes Production Project EIS among the nuclear reactor research programs at SNL/NM. Plaintiffs do not seek to enjoin any current activity at SNL/NM. DOE believes that this litigation is moot because DOE has already sought congressional funding to begin preparing a sitewide EIS at SNL/NM in 1997. Any action at SNL/NM with respect to the production of Mo-99 and related isotopes would be supported by the final Medical Isotopes Production Project EIS and would not be tiered from or dependent on the 1977 EA.

3. Omega West Reactor and Chemistry and Metallurgy Research Facility at Los Alamos National Laboratory

Under this alternative, the Chemistry and Metallurgy Research Facility would be used to fabricate the targets as described for alternative 2. The targets would be transported to the Omega West Reactor for irradiation, and the irradiated targets would be transported back to the Chemistry and Metallurgy Research Facility for processing. Low level radioactive wastes from Mo-99 production would be disposed of on site. Spent nuclear fuel generated during the isotope production activities would first be stored on site and later shipped to the Savannah River Site for storage in accordance with the Records of Decision on the SNF PEIS.

To produce Mo-99 and related medical isotopes under this alternative, modifications would be required to the Chemistry and Metallurgy Research Facility and the Omega West Reactor. As discussed previously, the modifications required to fabricate targets at the Chemistry and Metallurgy Research Facility are relatively minor. Some interior walls would be removed, doors would be relocated, and glove boxes with filtered exhaust systems would be installed. Modifications required to support target processing operations would likewise be minor.

The Omega West Reactor is shut down and would need to be restarted to support isotope production. Restarting the reactor would involve replacing an underground cooling water pipe, upgrading reactor cooling and air monitoring systems, and updating the required facility safety documentation. An operational readiness review for restart of the reactor would have to be satisfactorily completed before operations could resume.

4. Oak Ridge Research Reactor and Radioisotope Development Laboratory at Oak Ridge National Laboratory (ORNL)

Under this alternative, the targets would be fabricated at the ORNL Radioisotope Development Laboratory. The targets would be transported to the Oak Ridge Research Reactor for irradiation, and the irradiated targets would be transported back to the Radioisotope Development Laboratory for processing. Low level radioactive wastes from Mo-99 production at ORNL would be transported to the Nevada Test Site for disposal. Spent nuclear fuel generated during the isotope production activities would first be stored on site and later shipped to the Savannah River Site for storage in accordance with the Records of Decision on the SNF PEIS.

To produce Mo-99 and related medical isotopes under this alternative, modifications would be required to the Radioisotope Development Laboratory and the Oak Ridge Research Reactor. The modifications required to fabricate and process targets at the Radioisotope Development Laboratory are relatively minor and include appropriate upgrades to facility ventilation and waste management systems.

The Oak Ridge Research Reactor is shut down and would need to be restarted to support isotope production. Restarting the reactor would involve upgrading the reactor cooling system, installing new reflectors in the reactor core, upgrading or repairing out-of-service equipment, and upgrading the required facility safety documentation. An operational readiness review for restart of the reactor would have to be

satisfactorily completed before operations could resume.

5. Power Burst Facility and Test Area North Hot Cells at Idaho National Engineering Laboratory

Under this alternative, the targets would be fabricated at a facility on site such as the Experimental Test Reactor Critical Facility annex in the Test Reactor Area. The targets would be transported to the Power Burst Facility for irradiation, and the irradiated targets would be transported to the Test Area North Hot Cells or a comparable hot cell facility on site for processing. Low level radioactive wastes from Mo-99 production would be disposed on site. Spent nuclear fuel generated during the isotope production activities would be stored on site in accordance with the Records of Decision on the SNF PEIS.

To produce Mo-99 and related medical isotopes under this alternative, modifications would be required to the Experimental Test Reactor Critical Facility annex, the Power Burst Facility, and the Test Area North Hot Cells. The required modifications at the Experimental Test Reactor Critical Facility annex are relatively minor and would include installation of glove boxes with filtered exhaust systems.

The Power Burst Facility is in standby mode and would need to be restarted to support isotope production. Restarting the reactor would involve replacing a significant portion of the reactor instrumentation, modifying the reactor core to allow for target insertion, and updating the required facility safety documentation. An operational readiness review for restart of the reactor would have to be satisfactorily completed before operations could resume.

The Test Area North Hot Cells would require only minor modifications to support Mo-99 target processing.

Evaluation

This section describes the results of DOE's evaluation of each of the alternatives. It summarizes their environmental impacts, costs, and schedules and concludes by addressing the issue of privatization.

Environmental Impacts

The environmental impacts of producing enough Mo-99 to meet 100 percent of the U.S. demand were assessed in the EIS. However, since DOE currently proposes only to provide a backup capability that would be operating to meet 10 percent to 30 percent of the annual U.S. Mo-99 demand, the actual consequences would be lower than the estimated levels presented in the EIS and described in this section unless there were an interruption of the Canadian supply for the entire year. The analyses in the EIS indicate that environmental impacts of any of the production alternatives would be minimal and well within applicable regulatory guidelines. Each of the action alternatives would use essentially the same technology for the production of Mo-99 and related medical isotopes. Minor differences in environmental impacts among the alternatives relate primarily to the type and status of the existing facilities, the modifications required to prepare the facilities for production, the quantities of low level waste generated, how those wastes would be managed, and the location of the production facilities with respect to the surrounding population and to the medical isotope distributors. All of the production alternatives discussed in the EIS would use existing facilities with relatively minor modifications and would have negligible consequences with respect to land use, cultural resources, aesthetic resources, geologic resources, water quality, ecological resources, or noise. In the category of regional socioeconomics, the sum of primary and secondary employment impacts ranged from 100 to 300 total regional jobs and from $3 million to $6 million in annual regional income, generally less that 0.1 percent of the corresponding regional totals. Thus, the potential impacts on the adequacy of community resources and services would be negligible under any alternative.

The environmental analyses revealed some differences in the radiological impacts to the public and to workers resulting from the design and location of particular facilities, but the consequences would be within regulatory limits in all cases. The analyses did not identify any alternative that provided a substantial advantage in terms of environmental consequences. For example, the combined collective radiation dose to the public from facility operations and transportation (including crew dose) in person-rem per year ranged from 64 for ORNL to 89 for SNL/NM, and the radiological dose to project workers in person-rem per year was estimated to range from 9 to 12 for LANL to 22 to 25 for SNL/NM.[1] As shown in the EIS, these doses would not be expected to result in latent fatal cancers for either workers or the public, and doses to exposed individuals would be well within regulatory limits. In addition, because all of the production alternatives would use small research reactors and comparable target fabrication and processing facilities, the risk of human health effects from credible facility accidents is very low, and the consequences of those accidents would be within DOE safety guidelines.

Production of low level radioactive waste would be less than 85 cubic meters per year, and spent nuclear fuel would be generated at the rate of 16 to 32 kilograms per year under any alternative. These quantities of waste and spent nuclear fuel are small compared to the quantities of similar materials at the DOE facilities where they would ultimately be managed. All of the alternative sites have sufficient waste management capability either on site or through existing arrangements with other DOE sites to dispose of low level waste generated by the proposed activity. All alternative sites have adequate capabilities for storage of spent fuel for at least five years, if necessary, before the spent fuel is shipped to the Savannah River Site or INEL for storage in accordance with the Records of Decision on the SNF PEIS.

Cumulative impacts on site and community infrastructure would be negligible because the medical isotope production process would use existing facilities and a relatively small staff. The quantities of radioactive waste generated annually, radiological facility emissions, and radiation dose to workers would increase compared to current or historical DOE operations at each of the sites considered in the EIS. Some sites would experience a large percentage increase in some impact categories; however, the absolute quantities are low and the consequences are generally small compared to current or historical DOE operations. For example, the quantity of solid low level waste that would be generated annually at SNL/NM would represent a 50 percent increase over historical generation levels, but the absolute quantity of waste generated is relatively small (49 cubic meters). Even with these increases, the cumulative regional emissions, doses, or other impacts would not exceed any regulatory limits at any of the alternative sites.

The consequences of the No Action alternative would consist of those associated with ongoing production of medical isotopes at the Canadian facilities and transportation of medical isotopes to the current U.S. suppliers and their customers. The No Action alternative would also result in a

[1] The facility and transportation values were derived from Table S–2 on page xiv of the EIS by adding the radiological dose to the population within 80 km (50 miles) from target irradiation and processing to the transportation radiological dose to the crew and public. The dose to project workers was taken from Table 3–1 on page 3.61 of the EIS.

continued risk to the U.S. health care community and its consumers. If the sole Canadian source of Mo-99 became unavailable for an extended time, certain medical procedures could not be offered, and the cost of some diagnostic procedures and medical risk to patients would likely increase substantially.

Costs

All cost analyses presented in the EIS were performed based on the operational capabilities required by each of the alternative sites to produce 100 percent of the U.S. demand for Mo-99 as quickly as possible. Cost estimates for each alternative include estimated expenditures to (1) prepare the reactor facility for startup, (2) operate the reactor to irradiate targets, (3) prepare the hot cell facility for processing irradiated targets, (4) process the targets to obtain the desired product, (5) prepare the target fabrication facility for production, and (6) fabricate targets. Preparation costs include estimated expenditures associated with site-specific process verification and document preparation. Operations costs were estimated on an annual basis and include estimated expenditures associated with radioactive waste management processes. The cost estimates do not include current expenditures that are being incurred by each of the sites to maintain their facilities, general isotope research (including Mo-99) and process experimentation costs being incurred, or planned decommissioning costs.

Both the estimated preparation costs and operations costs are of similar magnitude among the alternatives. The estimated preparation costs range from $17.2 million for INEL to $21.0 million for ORNL. The estimated preparation costs for both the SNL/NM and LANL alternatives are $19.6 million. The estimated annual operating costs range from $8.4 million for INEL to $12.8 million for SNL/NM. The estimated annual operating costs for ORNL and LANL are $9.6 million and $11.0 million, respectively.

DOE recognized the varying degrees of confidence associated with these estimates and, therefore, commissioned an evaluation of the level of uncertainty associated with each of the estimates. The evaluation was performed by Jupiter Corporation and is presented in the report, *Cost and Schedule Evaluation of Mo-99 Production Options Identified in the Environmental Impact Statement*, June 3, 1996. This evaluation produced a range of likely costs and schedules for each of the production alternatives identified in the EIS. The SNL/NM estimates of schedule and cost are based on a detailed, integrated schedule with corresponding resource requirements. The Jupiter report estimated the costs for SNL/NM to have an uncertainty of about 10 percent. The LANL estimates are also based on a detailed, integrated schedule and have a similar level of accuracy as the SNL/NM estimates for the activities that LANL has identified. However, a greater level of schedule and cost uncertainty exists for the LANL alternative because of unanticipated delays and facility costs that are likely to be encountered in the restart and operation of the Omega West Reactor. The Jupiter report estimated that the costs for LANL have the potential to increase by about 25 percent for preparation cost and 9 percent for annual operating cost.

The level of uncertainty is also greater in the case of estimated expenditures for ORNL and INEL due to cost projections made at a less detailed level than for the other two sites. Also for ORNL, uncertainties exist in the cost and schedule for restart of the Oak Ridge Research Reactor that has been shut down since 1987. The Jupiter report estimated that the ORNL reactor preparation costs have the potential to increase by over 25 percent and the operating costs have a 20 percent uncertainty. In the case of INEL, Power Burst Facility replacement fuel costs were not included in the EIS estimate for operating costs. On a yearly basis, this added cost is likely to be in the range of $1 million to $1.5 million. In addition, the uncertainty in restart requirements and the likelihood of increased operational costs contribute to Jupiter's estimate of potential cost increases of over 35 percent for both facility preparations and operations. When all of these cost uncertainties are taken into consideration, the likely costs of preparation and operation would be of similar magnitude for each alternative.

Schedules

Three milestones were compared in the EIS for each of the alternative Mo-99 production sites. The first milestone is reached when the alternative could begin initial production of Mo-99. Initial production is defined as the ability to reliably irradiate and process a limited number of targets (one or more per week). The ability to reach this milestone quickly is particularly important, because its attainment would allow DOE to initiate the FDA approval process and achieve an emergency production capability for some quantity of Mo-99. The second milestone is completion of all necessary facility modifications (reactor and hot cell) and process equipment construction. The final milestone is achievement of both an FDA-approved production capacity and trained staff to meet 100 percent of the U.S. demand for Mo-99 on a continuous basis.

Based on the schedules prepared by the potential host sites, the first milestone could be reached by SNL/NM in 6 months from the Record of Decision, in 13 months by LANL, 22 months by INEL, and 24 months by ORNL. The time estimated to complete facility modifications and thus meet the second milestone is 18 months from the Record of Decision for LANL, 22 months for both SNL/NM and INEL, and 24 months for ORNL. Finally, full production capability, the third milestone, is estimated to be reached 20 months from the Record of Decision for LANL, 28 months for both SNL/NM and INEL, and 30 months for ORNL.

As in the case of cost estimates, the foregoing schedules are subject to varying degrees of confidence. The Jupiter Corporation evaluation of the schedules for each of the production alternatives identified a 10 percent uncertainty level in the SNL/NM schedule estimates for the reasons stated previously. Based on uncertainties in restarting the reactors at LANL, ORNL, and INEL, Jupiter estimated that the LANL schedule estimates had the potential to extend by 6 to 24 months, and that both the ORNL and INEL schedule estimates had the potential to increase by 6 to 12 months.

The uncertainties in the restart of reactors arises from the need for these nuclear facilities to have approved safety analysis reports (SAR) and to satisfactorily complete an operational readiness review. It is the policy of the Department that nuclear facilities and operations be analyzed to identify all hazards and potential accidents associated with the facility and the process systems, components, equipment, or structures, and to establish design and operational means to mitigate these hazards and potential accidents. A SAR documents the results of these analyses and their adequacy to ensure that the facility can be constructed, operated, maintained, shut down, and decommissioned safely and in compliance with applicable requirements. These detailed documents must be reviewed and approved by DOE. The current DOE standard for SARs is presented in DOE Order 5480.23. Of the alternatives evaluated in the EIS, the ACRR at SNL/NM is the only reactor with an approved SAR that complies with this order. Initial Mo-99 production activities could proceed under the current ACRR SAR, although

the document would need to be amended in the future to analyze modifications necessary to support full Mo-99 production capability while the reactor continues to operate. The other reactors have previously approved SARs, but they are now out of date and not in compliance with the current DOE order. To operate those reactors, the operating laboratory would need to either demonstrate equivalence of the reactor's approved SAR to DOE Order 5480.23 or update the reactor's approved SAR to comply with the order. The Omega West Reactor at LANL has a draft SAR written in compliance with DOE Order 5480.23, but the approval process was stopped in 1993 after the reactor was placed in safe shutdown. The time and cost to revise existing SARs to meet DOE Order 5480.23 and obtain DOE approval varies according to the type and size of the nuclear facility. The need to update an SAR before a reactor can return to operation creates the potential for schedule delays, cost increases, and facility modifications to resolve unanticipated safety concerns. Significant updating of a reactor SAR to meet the current order and obtaining DOE review and approval typically costs several millions of dollars and takes over two years to complete. These potential schedule and cost impacts were considered in the uncertainty evaluation performed by Jupiter.

Similarly, the need to conduct readiness reviews introduces cost and schedule uncertainties that could be significant depending on the level of review required. DOE Order 425.1 establishes the requirements for the restart of existing nuclear facilities that have been shut down. The requirements specify an independent readiness review process to demonstrate that it is safe to restart the facility. The order provides for two levels of review: an operational readiness review or a readiness assessment. DOE determines whether and which of these reviews need to be performed prior to the restart of a nuclear facility that has experienced conditions such as an unplanned shutdown, an extended shutdown (12 months for the category of reactors considered as Mo–99 production alternatives), or after substantial facility modifications that require changes in the safety basis previously approved by DOE. The breadth and depth of the review required determines the amount of uncertainty introduced into cost and schedule estimates for restarting the reactor.

Generally, an operational readiness review does the following:

(1) Assesses the physical condition of the nuclear facility;

(2) Assures that the facility drawings are a reflection of the current design of the facility;

(3) Assures that the procedures reflect the facility as it currently exists and can be conducted as written;

(4) Assures that the safety documentation is a reflection of the current design of the plant and adequately defines the envelope of the safe operating domain;

(5) Assures that the personnel operating and managing the facility have the appropriate and/or required background and training to safely conduct operations and management of the facility; and

(6) Assures that the facility has achieved a state of emergency preparedness that is acceptable, and that the facility can appropriately conduct the steps of the site emergency procedures.

A minimum set of requirements for an operational readiness review is presented in section 4.d. of DOE Order 425.1, but the full set of review requirements is initially defined by DOE management and may be expanded by the operational readiness review team during the review if appropriate. The length of time required to conduct an operational readiness review depends on the review requirements ultimately established and could take between 6 and 24 months.

In contrast, a readiness assessment generally focuses on a few specific areas of review and is often less time and resource intensive than an operational readiness review. Depending on the causes and duration of the shutdown and the modifications accomplished during the shutdown, a readiness assessment may be as short and simple as a restart check procedure, or it may approach the breadth and depth of an operational readiness review. As in the case of the preparation of safety documentation, the potential schedule and cost impacts of readiness reviews were considered in the uncertainty evaluation performed by Jupiter.

Privatization

DOE's objective is to establish a reliable backup Mo-99 production capability as soon as practicable. From the inception of the EIS process, DOE has stated that while it prefers that Mo-99 be produced for the long term by the private sector, establishment of long-term private sector production is not within the scope of the EIS. In the long term, DOE will explore the possibility of private sector participation in the production of Mo-99 consistent with the DOE National Isotope Strategy. As discussed in the Background section of this document, however, it is unlikely that a private domestic source of Mo-99 is attainable in the near term to address the current vulnerability of the U.S. supply. For this reason, the long-term goal of privatization of Mo-99 production was expressly excluded from consideration in the EIS. DOE published in *Commerce Business Daily* on December 5, 1995, and in the Federal Register (60 FR 63515) on December 11, 1995, a Notice for Expressions of Interest regarding the possible privatization of all of DOE's isotope activities. The Expressions of Interest were requested by March 29, 1996. Expressions of Interest that could apply to the production of Mo-99 and related isotopes were received for review during April 1996. Some of these Expressions of Interest are general in nature and do not focus on a particular site of interest for Mo-99 production activities. Several others are site specific and are directed toward either the use of the ACRR at SNL/NM or the Omega West Reactor at LANL. Because these Expressions of Interest are proprietary and are still under review, it is not appropriate to elaborate on their contents. However, the decision DOE is making here will not preclude privatization in the long term.

Comments on the Final EIS

DOE received three comment letters after it issued the final EIS and has responded to them individually. Two letters were from residents of Albuquerque, New Mexico, who expressed concern regarding the handling and management of waste and spent nuclear fuel, topics addressed in the final EIS. The third letter was from Senator Dirk Kempthorne of Idaho who urged the selection of INEL as the site for Mo-99 production and included a critique of the EIS. Most of the issues raised in this letter concern the relative strengths and capabilities of INEL as an alternative and the limitations of the preferred alternative including the potential for the ACRR to be recalled for defense-related testing, the agency's motivation for preparing the EIS, and the suitability of the ACRR for privatization. All of these topics are addressed in the final EIS.

Several concerns presented in Senator Kempthorne's letter warrant a response here. First, the Department has considered and recognizes INEL's long history of medical isotope production and the significant historical contributions of INEL to DOE's missions. In the final EIS, DOE has recognized the relative strengths and the desire of each alternative location to host the Mo-99 mission. The

Department has been committed to giving each alternative location a fair and careful look.

The potential recall of the ACRR for a defense mission also deserves particular comment. When it issued the final EIS, DOE believed that the chance of the ACRR being recalled for defense missions in time of national emergency was sufficiently low so as not to disqualify the ACRR as an alternative. Based on extensive discussions between the Office of Defense Programs and the Office of Nuclear Energy, Science and Technology, DOE continues to believe that the likelihood of a defense-related national emergency occurring that would require the use of the ACRR within the next several years is remote. DOE also believes that the critical need to establish a backup supply of Mo-99 in the shortest possible time far outweighs the minimal risk that this reactor would be recalled for defense-related emergencies.

Environmentally Preferable Alternative

With respect to the establishment of a production capability for Mo-99 and related medical isotopes, the No Action alternative is the environmentally preferable alternative. Under the No Action alternative, the U.S. medical community would continue to rely on the single existing supply source for Mo-99, and any environmental impacts would occur primarily outside the United States. The No Action alternative, however, leaves the U.S. medical community vulnerable to a shortage of Mo-99 that could have a significant negative impact on the quality of health care received by thousands of U.S. medical patients each day. Therefore, the No Action alternative was not selected.

Of the alternatives that would satisfy the purpose and need for action, the potential environmental impacts are generally small and of similar magnitude. Each of the action alternatives would use essentially the same technology for the production of Mo-99 and related medical isotopes. Minor differences among the action alternatives relate primarily to the type and status of the existing facilities, the modifications required to prepare the facilities for isotope production, and amounts of low level waste generated and how those wastes would be managed. No single alternative has the least impact in all of the categories analyzed in the EIS. For example, ORNL has the lowest collective radiation dose to the public; however, it could generate the second highest volume of low level waste. Similarly, SNL/NM has the lowest utilization of uranium in fuel, and water usage, of all the sites considered but has a slightly higher worker dose during processing and operation. However, these differences and the others identified in the EIS are very minor and do not provide a basis for selecting an environmentally preferred alternative among those alternatives that satisfy the purpose and need for action.

Decision

DOE has decided to implement the proposed project as specified in the preferred alternative in the EIS, that is, to produce Mo-99 and related isotopes at the ACRR and Hot Cell Facility at SNL/NM and to fabricate targets at the Chemistry and Metallurgy Research Facility at LANL. The basis for this decision rests on DOE's determination that it is essential to address as soon as possible the U.S. vulnerability to the failure of its sole source of supply of Mo-99, an isotope vitally necessary for the medical diagnosis of thousands of patients every day. Failure of the sole Canadian supply would leave the United States with critical shortages of Mo-99 within a week.

The analyses of the alternatives in the EIS demonstrate that the impacts on the environment, involved workers, and the residents in the affected communities would be very small and within applicable regulatory limits and would not provide a basis for discrimination among the alternatives. The ACRR is the only reactor among all of the alternatives that is presently operating, and the ACRR can provide the earliest possible production of Mo-99 in the event that the Canadian supply becomes unavailable. The ACRR also has the most reliable projections of costs and schedules for meeting the planned production goals.

The Department recognizes that the Office of Defense Programs has expressed interest in retaining the capability to use the ACRR in the event of a national emergency. The Department considers the likelihood of such an emergency in the next several years to be highly unlikely. DOE has decided that the critical need to establish a backup supply of Mo-99 in the shortest possible time far outweighs the minimal risk that this reactor would be recalled for defense-related emergencies.

This decision is not affected by the litigation in *Pueblo of Isleta* v. *Dep't of Energy*, No. 96–0508 (D. N.M. filed Apr. 15, 1996). The Medical Isotopes Production Project is based upon its own final EIS that evaluates the cumulative impacts of the proposed action at SNL/NM as well as all of the other proposed alternatives. Neither that EIS nor this decision is dependent in any way upon the 1977 SNL/NM sitewide EA that the plaintiffs seek to enjoin reliance upon. Moreover, DOE believes that this litigation is moot because DOE has already sought congressional funding to begin preparing a sitewide EIS at SNL/NM in 1997.

Use of all Practicable Means To Avoid or Minimize Harm

Implementation of this decision will result in low environmental and health impacts. Mitigation measures typically applied to the operation of small research reactors and to the activities necessary to fabricate, irradiate, and process the Mo-99 targets will be applied throughout the project. These measures include filtration of air emissions from target fabrication, irradiation, and processing activities in accordance with applicable requirements and as low as reasonably achievable principles. Accordingly, no mitigation action plan is necessary.

The Medical Isotopes Production Project: Molybdenum-99 and Related Isotopes will be initiated at the preferred alternative facilities under the program direction of the Office of Nuclear Energy, Science and Technology and the Kirtland Area Office, Albuquerque Operations Office.

Issued in Washington, D.C., this 11th day of September 1996.

Terry R. Lash,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 96–23738 Filed 9–16–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, TX

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, September 24, 1996: 4:00 p.m.–8:30 p.m.

ADDRESS: Amarillo College, 2201 S. Washington, College Union Building, 2nd Floor, Oak-Acorn Room, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager,

Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

4:00 pm—Welcome—Introductions—Approval of Minutes
4:10 pm—Co-Chairs' Comments
4:20 pm—Subcommittee Reports
—Policy and Personnel, by-laws review
—Nominations, 2nd reading for Stella Devers' nomination
4:40 pm—Task Force Reports
—Environmental Restoration
4:45 pm—Agency for Toxic Substances and Disease Registry Update
Rick Collins, Sr. Scientist
5:00 pm—Updates
—Occurrence Reports
—Vulnerability Update
6:00 pm—Break
6:30 pm—MOX Fuel Discussion Panel
Dr. K. L. Peddicord, Texas A&M University
Dr. Bill Weida, Colorado College
Perspectives from local residents who travelled to MOX facilities:
Mr. Ronald W. Zerm
Mr. Bob Juba
Representative from nuclear power industry, BNFL or Cogema
Mr. Paul Leventhal, Nuclear Control Institute
7:45 pm—Question and Answer Session
8:25 pm—Closing Comments
8:30 pm—Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on September 11, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–23732 Filed 9–16–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. PR96–14–000]

Bridgeline Gas Distribution LLC; Notice of Petition for Rate Approval

September 11, 1996.

Take notice that on August 27, 1996, Bridgeline Gas Distribution LLC (Bridgeline) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Bridgeline states that it is a local distribution company with a blanket certificate issued in Docket No. CP93–190 authorizing it to engage in NGPA Section 311 services as if it were an intrastate pipeline. Bridgeline owns and operates transportation and storage facilities in the State of Louisiana.

Bridgeline proposes an effective date of September 1, 1996.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions or protests must be filed with the Secretary of the Commission on or before September 26, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23683 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–110–001]

Iroquois Gas Transmission System, L.P.; Notice of Annual Charge Adjustment Filing

September 11, 1996.

Take notice that on September 6, 1996 Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 4. The proposed effective date of the tariff sheet is October 1, 1996.

Iroquois states that, pursuant to Section 154.402 of the Commission's regulations and Section 12.2 of the General Terms and Conditions of its tariff, Iroquois is making its Annual Charge Adjustment (ACA) filing to reflect a decrease of $0.0003 per Dth (from $0.0023 to $0.0020 per Dth) in its ACA surcharge.

Iroquois states that copies of the filing were served upon all jurisdictional customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. 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 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. 96–23681 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–231–003]

Kern River Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

September 11, 1996.

Take notice that on September 6, 1996, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective June 3, 1996:

Substitute First Revised Sheet No. 92
Second Substitute First Revised Sheet No. 126
Second Substitute Second Revised Sheet No. 127

Kern River states that the purpose of this filing is to reinstate tariff provisions, as granted by the Commission in its Order on Rehearing issued on July 31, 1996 (76 FERC ¶ 61,113) in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. 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 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. 96–23682 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–772–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

September 11, 1996.

Take notice that on September 6, 1996, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–772–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate an existing valve setting as a delivery point (Windom Delivery Point) to Northwest Gas of Cottonwood County, LLC. (Northwest Gas) in Cottonwood County, Minnesota, under Northern Border's blanket certificate issued in Docket No. CP84–420–000 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.

Northern Border proposes to operate an existing 4-inch tee and side valve at Valve Site No. 48 as the Windom Delivery Point to Northwest Gas. Northern Border states that it will deliver up to 10,000 Mcf on a peak day and an estimated 1.1 Bcf annually to Northwest Gas at the proposed Windom Delivery Point.

Northern Border states that Northwest Gas will construct and own measurement facilities at the proposed Windom Delivery Point. In addition, Northern Border stats that Northwest Gas will transport the gas volumes received at the Windom Delivery Point through a 3.2-mile-long 4-inch-diameter pipeline it plans to construct to a point of interconnection with Ethanol 2000, LLP (Ethanol 2000) and to a point of interconnection with Peoples Natural Gas Company (Peoples).

Northern Border states that Ethanol 2000 will use its natural gas volumes for heating, plant protection and ultimately to process corn into ethanol, and that Peoples will use its natural gas volumes to serve the town of Windom, Minnesota.

Northern Border states that there will not be any impact on the peak day capability of its existing shippers as a result of the proposed interconnect and any impact on annual deliveries will be de minimis. Northern Border further states that the proposed change is not prohibited by its existing tariff and that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any other customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23684 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–576–000]

Northwest Pipeline Corporation; Notice of Technical Conference

September 11, 1996.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Friday, October 4, 1996, at 9:30 a.m. in room 3M1, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208–2265.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23685 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–90–000, et al.]

LSP-Whitewater, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 10, 1996.

Take notice that the following filings have been made with the Commission:

1. LSP-Whitewater, L.P.

[Docket No. EG96–90–000]

On September 4, 1996, LSP-Whitewater, L.P. (''Applicant''), a Delaware limited partnership with its principal place of business at Two Tower Center, 10th Floor, East Brunswick, NJ 08816, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is in the process of constructing a combined-cycle gas-fired cogeneration facility (''the Facility'') in the City of Whitewater, Wisconsin. According to Applicant, the Facility is scheduled to commence commercial operation by June 1, 1997. Applicant states that the Facility is designed to generate approximately 245 megawatts of

electrical capacity measured at summer conditions.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. LSP-Cottage Grove, L.P.

[Docket No. EG96–91–000]

On September 4, 1996, LSP-Cottage Grove, L.P. (''Cottage Grove''), a Delaware limited partnership with its principal place of business at 402 East Main Street, Bozeman, Montana 59715, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cottage Grove states that it is in the process of constructing a dispatchable, combined-cycle natural gas-fired (with fuel oil back-up) cogeneration facility designed to generate approximately 245 megawatts of electrical capacity measured at summer conditions, and 262 megawatts of electrical capacity at winter conditions in Cottage Grove, Minnesota (the ''Facility''). Cottage Grove further states that the Facility will also produce a maximum of 190,000 pounds per hour of steam for sale. According to Cottage Grove, the Facility is scheduled to commence commercial operation by May 31, 1997. Cottage Grove states that most of the electrical capacity and energy from the Facility will be directly sold by Cottage Grove to Northern States Power Company (''NSP'') pursuant to a power purchase agreement dated May 9, 1994.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. North American Energy Services Company

[Docket No. EG96–94–000]

On September 5, 1996, North American Energy Services Company, a Washington corporation, 999 Lake Drive, Suite 310, Issaquah, Washington 98027 (''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Applicant states that it will be engaged in managing daily operations and maintenance of eligible facilities to be constructed in Argentina: the 77 MW Central Termica Patagonia power plant located near Comodoro Rivadavia, Argentina.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Power Services, Inc., Wilson Power & Gas Smart, Inc., Jpower, Inc., Boyd Rosen and Associates, Inc., and SuperSystems, Inc.

[Docket Nos. ER95–748–005, ER95–751–006, ER95–1421–004, ER95–1572–002, and ER96–906–001]

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, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On August 26, 1996, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1995, order in Docket No. ER95–751–000.

On August 21, 1996, Jpower, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1421–000.

On July 17, 1996, Boyd Rosen and Associates, Inc. filed certain information as required by the Commission's October 23, 1995, order in Docket No. ER95–1572–000.

On August 23, 1996, SuperSystems, Inc. filed certain information as required by the Commission's March 27, 1996, order in Docket No. ER96–906–000.

5. Florida Power Corporation

[Docket No. ER96–2903–000]

Take notice that on September 4, 1996, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and Calpine Power Services Company. The contract provides for service under Schedule J, Negotiated Interchange Service and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on September 5, 1996. Waiver is appropriate because this filing provides for rates under the Schedule OS that are lower than the rates for Schedule OS which have been previously accepted for filing.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER96–2904–000]

Take notice that on September 4, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and NorAm Energy Services, Engelhard Power Marketing, Koch Power Services, Inc., Electric Clearinghouse, Entergy Services, Inc., Enron Power Marketing, Inc., Rainbow Energy Marketing Corp., Morgan Stanley Capital Group, Inc., Municipal Electric Authority of Georgia, and Southeastern Power Administration (SEPA) under Rate GSS.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER96–2905–000]

Take notice that on September 4, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and PanEnergy Power Services, Inc. (PanEnergy). Duke states that the TSA sets out the transmission arrangements under which Duke will provide PanEnergy non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER96–2906–000]

Take notice that on September 4, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA), between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and South Carolina Electric & Gas Company (SCE&G). Duke states that the TSA sets out the transmission arrangements under which Duke will provide SCE&G non-firm point-to-point transmission service under its Pro Forma Open Access Transmission Tariff.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER96–2907–000]

Take notice that on September 4, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1996 between Cinergy, CG&E, PSI and Williams Energy Services Company (WESCO).

The Interchange Agreement provides for the following services between Cinergy and WESCO.

1. Exhibit A—Power Sales by WESCO.
2. Exhibit B—Power Sales by Cinergy.

Cinergy and WESCO have requested an effective date of September 9, 1996.

Copies of the filing were served on Williams Energy Services Company, Oklahoma Corporation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER96–2908–000]

Take notice that on September 5, 1996, Interstate Power Company (IPW), tendered for filing a replacement Transmission Service Agreement between IPW and Illinois Power Company (IP). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to IP.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER96–2909–000]

Take notice that on September 5, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and IUC Power Services (IUC). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows IUC to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7, under Docket No. OA96–196.

Wisconsin Electric requests waiver of the Commission's notice requirements and an effective date of September 15, 1996 to allow for economic transactions. Copies of the filing have been served on IUC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–2910–000]

Take notice that on September 5, 1996, PECO Energy Company (PECO), filed a Service Agreement dated August 30, 1996 with Rochester Gas and Electric Corporation (RG&E) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds RG&E as a customer under the Tariff.

PECO requests an effective date of August 30, 1996, for the Service Agreement.

PECO states that copies of this filing have been applied to RG&E and to the Pennsylvania Public Utility Commission.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER96–2911–000]

Take notice that on September 5, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Long-Term Firm Point-to-Point Transmission Service to The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire (together, the NU System Companies) under the NU System Companies' Open Access Transmission Service Tariff No. 8. The Service Agreement provides for the delivery of a sale of Power from the NU System Companies to the Citizens Lehman Power Sales LP.

NUSCO states that a copy of this filing has been mailed to the NU System Companies.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER96–2912–000]

Take notice that on September 5, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements, executed by AEPSC and the following Parties, under the AEP Companies' Power Sales and/or Point-to-Point Transmission Service Tariffs: Carolina Power & Light Company, IUC Power Services, PacifiCorp Power Marketing, Inc., City of Shelby, Ohio, and Williams Energy Services Company.

The Power Sales Tariff has been designated as FERC Electric Tariff, First Revised Volume No. 2, effective October 1, 1995. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after August 7, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Indianapolis Power & Light Company

[Docket No. ES96–43–000]

Take notice that on September 3, 1996, Indianapolis Power & Light Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured promissory notes, from time to time, in an aggregate principal amount of up to $175 million outstanding at any one time on or before December 31, 1998, with final maturities not more than twelve (12) months after the date of issuance.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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. 96–23766 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–34–000, et al.]

State Line Energy, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

September 9, 1996.

Take notice that the following filings have been made with the Commission:

1. State Line Energy, L.L.C.

[Docket No. EC96–34–000]

Take notice that on September 3, 1996, State Line Energy, L.L.C. tendered

for filing an application requesting authorization to acquire certain jurisdictional facilities pursuant to Section 203 of the Federal Power Act. The application involves the proposed purchase by State Line Energy of the 490 MW coal-fired State Line Generating Station location near Lake Michigan in Hammond, Indiana.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. PanEnergy Trading and Market Services, L.L.C., et al.

[Docket No. EC96–35–000]

Take notice that on September 5, 1996, PanEnergy Power Services, Inc. (PPSI), PanEnergy Trading and Market Services, L.L.C. (PT&MLLC), and Mobil Natural Gas Inc. (MNGI) (collectively, the Applicants) filed an application for approval to transfer wholesale power agreements from PPSI to PTMSI Management, Inc. (PTMSI), and immediately thereafter to PT&MLLC, a limited liability company jointly owned by PTMSI and MNGI.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Kalaeloa Partners, L.P.

[Docket No. EG96–89–000]

On August 30, 1996, Kalaeloa Partners, L.P. (''Kalaeloa''), with its principal office located at 202 Carnegie Center, Suite 100, Princeton, NJ 08540, filed with the Federal Energy Regulatory Commission an application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Kalaeloa states that it is a Delaware limited partnership. Kalaeloa is engaged directly and exclusively in owning a 209 MW fuel oil fired power plant (the ''Facility'') located in Oahu, Hawaii and selling energy at wholesale from the Facility to a Hawaiian electric public utility. In addition, steam cogenerated from the Facility will be sold to an independent refinery.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Power Development Corporation

[Docket No. EG96–92–000]

On September 4, 1996, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992. The applicant is a corporation that is engaged directly or indirectly and exclusively in owning and operating eligible facilities and selling electric energy at wholesale and at retail abroad. Applicant is investing in a facility being developed in the Sindh Province of Pakistan near the town of Daharki. The facility will consist initially of one 215 MW combined-cycle gas-fired plant. In a second phase, the capacity of the Facility may be increased to as much as 470 MW. The facility will include such interconnection components as are necessary to interconnect the facility with the utility grid.

Comment date: September 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER94–1625–002]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on August 8, 1996, tendered for filing a supplemental refund report in accordance with the Commission's June 13, 1996, order in the above-referenced proceeding.

Copies of the filing have been served on the City of Geneva, Illinois, the City of Kiel, Wisconsin, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket No. ER96–2205–000 and ER96–2237–000]

Take notice that on August 16, 1996, Arizona Public Service Company (APS) tendered for filing an amendment to its June 25, 1996, filing in Docket No. ER96–2237–000 and its June 21, 1996, filing in Docket No. ER96–2205–000.

APS requests waiver of the Commission's Notice Requirements to allow for an effective date of November 21, 1991 for the Interconnection of the Waddell 230 Kv Transmission Line at the Westwing Substation.

A copy of this filing has been served on the Arizona Corporation Commission, the Nevada Public Service Commission, the Salt River Project, Tucson Electric Power Company, the United States Bureau of Reclamation, and Nevada Power Company.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Dayton Power and Light Company

[Docket No. ER96–2274–000]

Take notice that on August 19, 1996, The Dayton Power and Light Company (DP&L) tendered for filing a supplement to its June 28, 1996, filing of an agreement dated June 25, 1996 between DP&L and American Municipal Power-Ohio with 30 MW of non-firm point-to-point transmission service from DP&L's interconnection with Cincinnati Gas & Electric Company to DP&L's interconnection with the Ohio Edison Company.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New Jersey Natural Energy Company

[Docket No. ER96–2627–000]

Take notice that on August 30, 1996, New Jersey Natural Energy Company tendered for filing a supplement to its August 5, 1996, Petition filed in this docket.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. E Prime, Inc.

[Docket No. ER96–2767–000]

Take notice that on August 19, 1996, E Prime, Inc. tendered for filing a letter approving its application for membership in the Western Systems Power Pool.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. ER96–2770–000]

Take notice that on August 20, 1996, Sierra Pacific Power Company (Sierra) tendered for filing a Special Facilities Agreement between Sierra and Wells Rural Electric Company.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Texas Utilities Electric Company

[Docket No. ER96–2844–000]

Take notice that on August 29, 1996, Texas Utilities Electric Company (TU Electric) tendered for filing three executed transmission service agreements (TSA's) with National Gas & Electric, L.P., Morgan Stanley Capital Group, Inc. and Aquila Power Corporation for certain Economy Energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service

commencement date under each of the three TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on National Gas & Electric, L.P., Morgan Stanley Capital Group, Inc. and Aquila Power Corporation as well as the Public Utility Commission of Texas.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER96–2876–000]

Take notice that on September 3, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and PacifiCorp Power Marketing, Inc. under Rate TS.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER96–2877–000]

Take notice that on September 3, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Purchase and Sales Agreement between LG&E and Duke/Louis Dreyfus L.L.C. under Rate Schedule GSS—Generation Sales Service.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER96–2878–000]

Take notice that on September 3, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated August 28, 1996, by KCPL. KCPL proposes an effective date of September 1, 1996 and requests waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Firm Transmission service by KCPL for a wholesale transmission.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. US Energy, Inc.

[Docket No. ER96–2879–000]

Take notice that on September 3, 1996, US Energy, Inc. petitioned the Commission for acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. US Energy, Inc. is a privately held, international firm, incorporated in Freeport, Grand Bahamas, with U.S. offices located in Jacksonville, Florida.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Company

[Docket No. ER96–2880–000]

Take notice that on September 3, 1996, Idaho Power Company (IPC), tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Cancellation for IPC's Rate Schedule FERC No. 131, the Interim Agreement to secure firm transmission through IPC's transmission system to facilitate the proposed merger of Washington Water Power and Sierra Pacific Power.

Copies of this filing were supplied to Washington Water Power and Sierra Pacific Power.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER96–2881–000]

Take notice that on September 3, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Coral Power, L.L.C.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Russell Energy Services Company

[Docket No. ER96–2882–000]

Take notice that on September 3, 1996, Russell Energy Services Company (RESCo), petitioned the Commission for acceptance of RESCo's Rate Schedule FERC Tariff No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates, and waiver of certain Commission Regulations.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER96–2885–000]

Take notice that on September 3, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and VTEC Energy Inc. (VTEC). This Service Agreement specifies that VTEC has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and VTEC to enter into separately scheduled transactions under which NMPC will sell to VTEC capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of August 22, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and VTEC.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER96–2886–000]

Take notice that on September 3, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing a supplement to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The supplement is made pursuant to the rate update provisions of the rate schedule.

NYSEG requests an effective date of September 1, 1996, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER96–2888–000]

Take notice that on September 3, 1996, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC

Electric Tariff, Original Volume No. 4) with the following entities: (i) PacifiCorp Power Marketing; and (ii) Progress Power Marketing, Inc. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER96–2889–000]

Take notice that on September 3, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and USGen Power Services, LP (USGen). This Service Agreement specifies that USGen has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and USGen to enter into separately scheduled transactions under which NMPC will sell to USGen capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of August 16, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and USGen.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Boston Edison Company

[Docket No. ER96–2890–000]

Take notice that on September 3, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Coral Power, L.L.C. (Coral). Boston Edison requests that the Service Agreement become effective as of September 1, 1996.

Edison states that it has served a copy of this filing on Coral and the Massachusetts Department of Public Utilities.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Boston Edison Company

[Docket No. ER96–2891–000]

Take notice that on September 3, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Duke/Louis Dreyfus, L.L.C. (Duke). Boston Edison requests that the Service Agreement become effective as of August 1, 1996.

Edison states that it has served a copy of this filing on Duke and the Massachusetts Department of Public Utilities.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. NGTS Energy Services

[Docket No. ER96–2892–000]

Take notice that on September 3, 1996, NGTS Energy Services (NES), tendered for filing pursuant to Section 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting in FERC Electric Rate Schedule No. 1 to be effective no later than 60 days from the date of its filing.

NES intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where NES sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. NES is not in the business of generating, transmitting, or distributing electric power.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas and Electric Company

[Docket No. ER96–2893–000]

Take notice that on September 3, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Purchase and Sales Agreement between LG&E and PacifiCorp Power Marketing, Inc. under Rate Schedule GSS—Generation Sales Service.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Cinergy Services, Inc.

[Docket No. ER96–2894–000]

Take notice that on September 4, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated August 1, 1996 between Cinergy, CG&E, PSI and PacifiCorp Power Marketing, Inc. (PacifiCorp PM).

The Interchange Agreement provides for the following service between Cinergy and PacifiCorp PM:

1. Exhibit A—Power Sales by PacifiCorp PM
2. Exhibit B—Power Sales by Cinergy

Cinergy and PacifiCorp PM have requested an effective date of September 9, 1996.

Copies of the filing were served on PacifiCorp Power Marketing, Inc., Oregon Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Southwestern Electric Power Company

[Docket No. ER96–2895–000]

Take notice that on September 4, 1996, Southwestern Electric Power Company (SWEPCO), tendered for filing an executed Scheduling Agent Agreement between SWEPCO and the City of Bentonville, Arkansas (Bentonville) and an executed Amendment No. 2 to the Power Supply Agreement between SWEPCO and Bentonville. SWEPCO states that the agreements (1) document an arrangement whereby SWEPCO will act as Bentonville's scheduling agent for the purpose of bringing Southwestern Power Administration (SPA) power to Bentonville's system and (2) coordinate the termination dates for the two agreements and Bentonville's contract with SPA.

SWEPCO requests an effective date of September 27, 1995, for both the Scheduling Agent Agreement and Amendment No. 2. Accordingly, SWEPCO seeks waiver of the Commission's notice requirements. Copies of this filing have been served on Bentonville, SPA and the Arkansas Public Service Commission.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Central Illinois Public Service Company

[Docket No. ER96–2896–000]

Take notice that on September 4, 1996, Central Illinois Public Service Company (CIPS) submitted a service agreement, dated August 15, 1996, establishing Commonwealth Edison Company (ComEd) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of August 15, 1996 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon ComEd and the Illinois Commerce Commission.

30. Commonwealth Edison Company

[Docket No. ER96–2897–000]

Take notice that on September 4, 1996, Commonwealth Edison Company (ComEd), submitted for filing five Service Agreements, establishing AIG Trading Corporation (AIG), Jacksonville Electric Authority (JEA), Coral Power, L.L.C. (Coral), Rochelle Municipal Utilities (Rochelle), and Phibro, Inc. (Phibro), as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of August 5, 1996 for the Service Agreements between ComEd and AIG, JEA, Coral, and Rochelle, and an effective date of August 6, 1996 for the Service Agreement between ComEd and Phibro, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AIG, JEA, Coral, Rochelle, Phibro and the Illinois Commerce Commission.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Long Island Lighting Company

[Docket No. ER96–2898–000]

Take notice that on September 4, 1996, Long Island Lighting Company (LILCO), tendered for filing an amendment to its filing of September 27, 1995, concerning an Interconnection Construction and Interconnection Agreement (ICIA) between LILCO and the Village of Freeport (Freeport).

The ICIA provides, among other things, for the installation and initial construction of a new 138 KiloVolt interconnection between LILCO's and Freeport's electric system. It also provides for the on-going operation, maintenance, repair, replacement, relocation, and removal of such interconnection. LILCO requests a waiver of the Commission's notice requirements to permit the ICIA to become effective on September 5, 1996.

The amendments to LILCO's filing consist of updates and clarifications requested by Commission staff.

LILCO states that copies of this filing have been served by LILCO on the New York State Public Service Commission, the New York Power Authority, and Freeport.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Southern Company Services, Inc.

[Docket No. ER96–2899–000]

Take notice that on September 4, 1996, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Entergy Services, Inc.; (ii) Williams Energy Services Company; (iii) Acquila Power Corporation; (iv) Arkansas Electric Cooperative Corporation; (v) Jonesboro City Water & Light; (vi) TransCanada Power Corp.; and (vii) CNB Power Services Corporation. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Northeast Utilities Service Company

[Docket No. ER96–2900–000]

Take notice that on September 4, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Plum Street Enterprises (PSE) under the NU System Companies System Power Sales/Exchanges, Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to PSE.

NUSCO requests that the Service Agreement become effective August 1, 1996.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Southwestern Public Service Company

[Docket No. ER96–2901–000]

Take notice that on September 4, 1996, Southwestern Public Service Company (Southwestern), submitted executed service agreements under its open access transmission tariff with West Texas Municipal Power Agency (WTMPA). The service agreements are umbrella agreements for firm and non-firm point-to-point transmission service.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Florida Power & Light Company

[Docket No. ER96–2902–000]

Take notice that on September 4, 1996, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Aquila Power Corporation. FPL requests an effective date of September 6, 1996.

Comment date: September 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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. 96–23686 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–610–000]

Granite State Gas Transmission, Inc.; Notice of Intent To Prepare a Supplement to the Draft Environmental Impact Statement for the Proposed Granite State LNG Project and Request for Comments on Alternative Siting Issues

September 11, 1996.

On January 29, 1996, the Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (DEIS) for the proposed Granite State Gas Transmission Inc.'s (Granite State) LNG Project in Docket No. CP95–52–000. However, on June 21, 1996, the Director of the Office of Pipeline Regulation of FERC dismissed the CP95–52–000 application without prejudice to the refiling by Granite State to change its proposal from a winter baseload to a peakshaving service. The dismissal letter also stated that all of the environmental information would be retained by the FERC staff and that Granite State could incorporate this material by reference if, and when, it

filed a new application reflecting a peakshaving facility. Subsequently, Granite State filed an application in Docket No. CP96–610–000 to reflect a change in the nature of the service from a winter baseload service to both an interim baseload and an ultimate peakshaving service. Granite State states that the LNG facility proposed in this application is identical to the facility proposed in Docket No. CP95–52–000.

On July 11, 1996, the FERC issued a Notice of Intent (NOI) To Prepare a Final Environmental Impact Statement for the Granite State LNG Project and stated that a new DEIS would not be issued for public comment. However, the notice did provide a 15-day period to file additional comments on environmental topics to be addressed in the FEIS as a result of the new application.

A number of commenters to the DEIS and to the July 11, 1996 NOI do not believe that the siting range for the proposed LNG facility should be limited to the 32-mile range examined in the DEIS. They believe that sites south of Eliot, Maine (the furthest area south of Wells studied in the DEIS) to Haverhill, Massachusetts should be studied in detail. Haverhill was identified in the DEIS as the optimum location for an LNG peakshaving facility to serve customers of the Portland Natural Gas Transmission System (PNGTS) in terms of engineering/pipeline flow objectives but it was beyond the DEIS study area. We agree that further study of sites south of Eliot, Maine is warranted, and will also expand the analysis to sites north of the area studied in the DEIS along both the PNGTS and Granite State systems for the following additional reasons: (1) Granite State confirmed that once PNGTS is in full service, the proposed LNG facility in Wells, ME could be moved anywhere along the Granite State pipeline or anywhere along the PNGTS section that parallels the Granite State pipeline; and (2) the siting decision for a major industrial facility should be based on the long-term intended use of the facility, rather than on a short-term interim service which may never be used. We are hereby specifically requesting recipients of this NOI to provide the staff with information on potential sites from Portland, Maine to Haverhill, Massachusetts which are or could be available for potential LNG peakshaving use.

The Supplement to the DEIS will focus solely on an expanded alternative siting analysis. Comments on other environmental issues associated with the DEIS will not be accepted. The comment period for those issues has already closed. If you have already submitted comments on the DEIS and/or the July 11, 1996 NOI, you should not resubmit them.

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.
- Reference Docket No. CP96–610–000.
- Send a *copy* of your letter to: Mr. Chris Zerby, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–55, Washington, DC 20426; and
- Mail your comments so that they are received in Washington, DC on or before October 11, 1996.

For further information on the EIS process for this project, call Robert Arvedlund, Chief, Environmental Review and Compliance Branch I, at (202) 208–0091 or Mr. Zerby at (202) 208–0111.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23763 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 10502–033, et al.]

Hydroelectric Applications [Garkane Power Association, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Approval of As-Built Drawings and Amendment of License.

b. *Project No:* 10502–033.

c. *Date Filed:* March 1, 1995.

Supplemental Filing: June 17, 1996.

d. *Applicant:* Garkane Power Association.

e. *Name of Project:* Lower Boulder Creek Hydropower Project.

f. *Location:* Garfield County, Boulder, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)-825(r).

h. *Applicant Contact:* Mr. Carl Albrecht, Garkane Power Association, 56 East Center Street, P.O. Box 790, Richfield, UT 84701, (801) 896–5403.

i. *FERC Contact:* Susan Tseng, (202) 219–2798.

j. *Comment Date:* October 15, 1996.

k. *Description of Project:* The licensee filed as-built exhibits following the completion of project construction. The as-built exhibit G drawing shows the project boundary has been increased to include 38.7 acres of federal lands.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2743–029.

c. *Date filed:* August 9, 1996.

d. *Applicant:* Alaska Energy Authority.

e. *Name of Project:* Terror Lake.

f. *Location:* The project is located approximately 25 miles southwest of the City of Kodiak, Alaska on the Terror and Kizhuyak rivers and their tributaries.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Mr. William R. Snell, Executive Director, Alaska Energy Authority, 480 West Tudor Road, Anchorage, Alaska 99503, Phone: (907) 269–3000.

i. *FERC Contact:* Buu T. Nguyen, (202) 219–2913.

j. *Comment Date:* October 15, 1996.

k. *Description of Amendment:* The licensee proposes to construct an erosion control project comprised of a series of three spur dikes and an overflow control dike adjacent to the Kizhuyak River, immediately upstream of the outfall of the project's tailrace. The purpose of the dikes is to provide protection of project's facilities from erosion and flooding by the Kizhuyak River. The licensee proposes to complete the work in 1996.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

3 a. *Type of Application:* Major License.

b. *Project No.:* 11214–001.

c. *Date Filed:* February 22, 1995.

d. *Applicant:* Southwestern Electric Cooperative, Inc.

e. *Name of Project:* Carlyle Reservoir.

f. *Location:* On the Kaskaskia River near the City of Carlyle, Clinton County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Weinberg, 1615 M Street, N.W.—Suite 800, Washington, DC 20036, (202) 467–6370.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* November 16, 1996.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Carlyle Dam and Reservoir and would consist of: (1) An intake structure, placed below pool surface, which includes a fish screen/

trashrack with 1.5-inch spaced horizontal bars; (2) five intake conduits (penstocks), each with a 96-inch inside diameter, approximately 680 feet long, placed about 500 feet east of the center of the spillway; (3) a 35-foot-wide by 73-foot-long concrete and brick masonry powerhouse equipped with: (a) five semi-kaplan type submersible generating units, each with a rated capacity of 800 kilowatts (kW), two turbines with variable pitch blades and three with fixed pitch blades; and (b) a hydraulic capacity ranging from 200 cubic feet per second (cfs) to 1,700 cfs; (4) a 1,400-foot-long, 5 kilovolt (kV), buried underground section of primary transmission line and a 3,000-foot-long section of above ground transmission line; and (5) appurtenant facilities. The project would have an estimated average annual generation of 15,000,000 kWh. The application was filed during the term of applicant's preliminary permit.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4, and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Barnes, Henry, Meisenheimer and Gende, Inc., 4658 Gravois Ave., St. Louis, Missouri 63116, (314) 352–8630, and at Southwestern Electric Cooperative, Inc., South Elm Street and Route 40, Greenville, Illinois 62246, (618) 664–1025.

4 a. *Type of Application:* Major Relicense.

b. *Project No.:* 1930–014.

c. *Date filed:* May 2, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Kern River No. 1.

f. *Location:* On the Kern River in Kern County, California, within Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Mr. C. Edward Miller, Manager of Hydro Generation, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Surender M. Yepuri, P.E., (202) 219–2847.

j. *Deadline Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* The application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The existing project consists of (1) a 60-foot-high, 204-foot-long concrete overflow diversion dam impounding a 27-acre reservoir at crest elevation 1,913 feet, mean sea level; (2) a gated intake structure at the left abutment with trash racks; (3) a 104-foot-long, 20-foot-wide sediment trap; (4) water conduit consisting of 42,884 feet of tunnel, 390 feet of rectangular flume, 904 feet of Lennon flume on steel structure, and 612 feet of arched-concrete conduit; (5) a 45-foot-long, 33-foot-wide, 11-foot-deep forebay; (6) a 1,693-foot-long buried penstock, with inside diameter varying from 108 inches at the intake to 71⅜ inches at the powerhouse; (7) a 170-foot-long, 71-foot-wide, reinforced concrete powerhouse containing four generating units with a total installed capacity of 26.3 MW; (8) a rectangular tailrace that discharges flows over a weir section into the Kern River; (9) two 1.9-mile-long, 66-kV transmission lines tying into the applicant's transmission system; and (10) appurtenant facilities.

m. *Purpose of Project:* The Kern River No. 1 project produces an average annual output of 178.6 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

5 a. *Type of Application:* Amendment of License.

b. *Project No.:* 5276–041.

c. *Dated filed:* August 21, 1996.

d. *Applicant:* Northern Electric Power Company, L.P. and Niagara Mohawk Power Corporation.

e. *Name of Project:* Hudson Falls.

f. *Location:* The project is located on the Hudson River, in Saratoga and Warren Counties, New York.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Mr. Keith F. Corneau, Vice President, Adirondack Resource Management Assoc., P.O. 829, Two Franklin Square, Saratoga Springs, NY 12866, Phone: (518) 587–4300.

i. *FERC Contact:* Buu T. Nguyen, (202) 219–2913.

j. *Comment Date:* October 17, 1996.

k. *Description of Amendment:* The licensee proposes to install temporary 2-foot-high wooden flashboards on the Hudson Falls Dam. The New York State Department of Environmental Conservation (NYSDEC) requested the flashboards to facilitate an ongoing PCB investigation and remediation program at the General Electric Company's Hudson Falls manufacturing facility on the opposite side of the river from the project. The NYSDEC indicated the temporary flashboards would help to prevent high river flows from entering the work area below the dam and increase the safety of working conditions.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's

regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (November 5, 1996 for Project No. 11214–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (December 20, 1996 for Project No. 11214–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (November 12, 1996 for P–1930–014). All reply comments must be filed with the Commission within 105 days from the date of this notice (December 26, 1996 for P–1930–014).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: September 11, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23765 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–194–003, et al.]

Northern Border Pipeline Company, et al.; Natural Gas Certificate Filings

September 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Northern Border Pipeline Company

[Docket No. CP95–194–003]

Take notice that on September 4, 1996, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–194–003, an amendment to its pending applications in Docket Nos. CP95–194–000 and CP95–194–001 for a certificate of public convenience and necessity, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations. In this amendment, Northern Border seeks (1) to amend its filings to modify the proposed facilities; (2) to abandon certain compression facilities; and (3) to operate facilities at an early date and to continue the accrual of allowance for funds used during construction (AFUDC) on such facilities until the in-service date of the project, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Northern Border seeks to: (1) abandon the existing 20,000 horsepower (HP) gas turbines at Compressor Station Nos. 6, 8, 9, 10, and 13; (2) install and operate 35,000 HP gas turbines at Compressor Station Nos. 6, 8, 9, 10, and 13; (3) install and operate a 35,000 HP gas turbine and cooling unit at Compressor Station Site No. 1; (4) install and operate a 6,500 HP electric drive compressor at Compressor Station Site No. 14; (5) install and operate a 12,000 HP electric drive compressor at Compressor Station Site No. 17; and (6) relocate the delivery point to ANR Pipeline Company. The projected in-service date for the project is November

1, 1998. The revised projected cost estimate is $792.6 million.

Northern Border states that the reconfiguration of the compression on its 42-inch mainline allows for the elimination of the two 42-inch pipeline loops proposed in Docket No. CP95–194–001, reduces total emission of NO_X, and reduces the overall environmental impact of the project. Northern Border also states that the reconfiguration of the compression on the 42-inch mainline reduces the compressor fuel on the existing system be 7,500 Mcf per day, saving approximately $5 million per year. Northern Border asserts that the proposed changes do not affect the cost comparison under the Commission's Policy Statement and do not otherwise affect the findings in the Commission's preliminary determination on non-environmental issues, issued August 1, 1996 (76 FERC ¶ 61,141 (1996)).

Northern Border intends to retrofit the existing 20,000 HP compressor units at Compressor Station Nos. 6, 8, 9, 10, and 13 to 35,000 HP compressor units. Northern Border intends to sequentially retrofit the various compressor units to avoid interruption of service to its existing customers. In order to maintain deliveries to firm shippers while the compressor units are being retrofitted, Northern Border will construct certain new compressor stations and operate them while the retrofitting is being completed.

Northern Border states that in order to facilitate safe construction of the 36-inch pipeline loop and to avoid interruption of service to existing firm shippers, it requests authority to place the loop in operation approximately 45 days prior to the in-service date of the project. Northern Border states that during this period the existing 30-inch mainline will be temporarily removed from service while the mainline valve setting cross-overs and launcher/receiver tie-ins are completed.

In connection with the retrofitting of the compressor stations and the ''tie-over'' of the 30-inch pipeline, Northern Border requests a waiver of the accounting regulations such that it may continue the accrual of AFUDC until the in-service date of the project.

Comment date: October 1, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP96–759–000]

Take notice that, on September 3, 1996, Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a request pursuant to its September 1, 1982 blanket certificate (in Docket No. CP82–401–000) and §§ 157.205 and 157.212 of the Commission's Regulations, for authorization to install and operate three new master meters in Polk and LaCrosse Counties, Wisconsin, so as to provide central measurement points for Wisconsin Gas Company (WGC) on the Tomah and Ladysmith Branchlines, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Northern Natural estimates that the three new master meters will cost approximately $596,000. Northern Natural proposes to locate the new master meters as follows:

Meter	Proposed location of delivery point
1. Tomah	NW/4 of Section 33, T17N, R6W LaCrosse County, Wisconsin.
2. Frederic	NE/4 of Section 26, T32N, R19W Polk County, Wisconsin.
3. Ladysmith	NE/4 of Section 26, T32N, R18W Polk County, Wisconsin.

Northern Natural states that WGC requested the new master meters in order to provide central measurement points on the Tomah and Ladysmith branchlines, for deliveries under Northern Natural's currently effective throughput service agreements. Northern Natural adds that the end-use of the volumes to be delivered to WGC at the proposed meters will be residential, commercial and/or industrial, and that the estimated peak-day and annual volumes to be delivered to WGC at the new meters (shown below) will not change and will continue to be made pursuant to Northern Natural's currently effective throughput service agreements with WGC.

Meter	Present (in MMBtu)		Proposed (in MMBtu)	
	Peak-day	Annual	Peak-day	Annual
Tomah	11,116	1,622,936	11,116	1,622,936
Frederic	18,643	2,721,878	18,643	2,721,878
Ladysmith	5,113	746,498	5,113	746,498

Northern Natural further states that the total volumes to be delivered to WGC after the request will not exceed the total volumes authorized prior to the request, that the proposed activity is not prohibited by its tariff, and that it has sufficient capacity to accommodate the changes proposed without detriment or disadvantage to its other customers.

Comment date: October 25, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP96–762–000]

Take notice that on September 4, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–762–000 a request pursuant to Sections 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization to replace and relocate the Missouri Public Service (MPS) Sedalia town border setting, 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.

Specifically, WNG proposes to reclaim the Sedalia double run, 10-inch orifice meter setting and appurtenant facilities located in Section 34, Township 46 North, Range 22 West, Pettis County, Missouri, and to install a new triple 6-inch run orifice meter setting and appurtenant facilities at the site of WNG's mainline gate in Section 35, Township 46 North, Range 23 West, Pettis County, Missouri. WNG states that the Sedalia town border meter setting was originally installed in 1931 and replaced in 1969. WNG estimates the cost to replace the Sedalia town border setting to be $175,886 which will be fully reimbursed by MPS. WNG explains that the installation of the new meter setting will provide for more accurate measurement at differing volumes and allow for the future abandonment of pipeline downstream of the new setting. WNG states that MPS has indicated an interest in acquiring

the approximately six miles of 12-inch pipeline between the old and the new setting, noting however, that an agreement has not yet been reached. WNG indicates that it does not anticipate that the delivered volume will change with the installation of the replacement town border facilities, stating that as a result, the total volume to be delivered under the authorization requested will not exceed the total volume authorized prior to this request.

Comment date: October 25, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Company

[Docket No. CP96–763–000]

Take notice that on September 4, 1996, Texas Gas Transmission Company (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP96–763–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate new delivery point facilities in Switzerland County, Indiana, to accommodate deliveries of natural gas to Indiana Gas Company (IGC), a local distribution company and an existing customer, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 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.

Texas Gas requests authorization to construct and operate facilities consisting of a dual 4-inch meter station and appurtenant facilities, to be located on Main Line System in Switzerland County. The cost of the facilities is estimated at $182,800. It is stated that IGC will reimburse Southern for the construction cost. Texas Gas states that it transports gas for IGC under an FT-Zone 4 Agreement as well as under a firm no-notice agreement. It is asserted that the proposed facilities will provide a second delivery point for Texas Gas to serve IGC. It is asserted that Texas Gas has the capability to accomplish the deliveries proposed without detriment or disadvantage to its other customers. It is further asserted that the deliveries at the proposed facilities will have no adverse effect on Texas Gas' peak day or annual deliveries.

Comment date: October 25, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

[Docket No. CP96–764–000]

Take notice that on September 4, 1996, Williams Natural Gas Company (WNG), P. O. Box 3288, Tulsa, Oklahoma, and KN Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP96–764–000, an abbreviated joint application pursuant to Section 7 of the Natural Gas Act, as amended, and part 157 of the Commission's Regulations, requesting issuance of a Commission order authorizing WNG and KNI to abandon an existing exchange agreement, and upon approval of the abandonment, authorization to cancel WNG's Rate Schedule X–10 and KNI's Rate Schedule X–5, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG and KNI have mutually agreed to terminate the agreement pursuant to the terms of the agreement dated March 27, 1970, which was originally authorized on July 22, 1970, in Docket Nos. CP70–258 (WNG) and CP70–239 (KNI).

The agreement provided that, commencing January 1, 1971, KNI would deliver to WNG a volume of gas equivalent to 50,000 Dth per day with the option to increase the delivery up to a maximum volume equivalent to 150,000 Dth per day. WNG agreed to deliver to KNI beginning January 1, 1971, at an approximately equivalent daily rate, volumes of gas equivalent as nearly as possible to the volumes delivered during the same period to WNG by KNI, at the outlet of the Hugoton compressor station; provided, however that any imbalance would be carried forward to the succeeding month.

The term of the agreement was for a period of twenty (20) years and from year to year thereafter unless terminated by either party by written notice given one year prior to the expiration of the primary term, or any anniversary thereafter. If the agreement was terminated, deliveries and receipts would continue for as long as necessary to eliminate any imbalance. WNG and KNI agreed to terminate the agreement effective October 1, 1993, and all imbalances were resolved in May 1996.

There will be no abandonment or modification of existing facilities. The facilities utilized in the referenced exchange agreement will remain in place.

Comment date: October 1, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. Pacific Gas Transmission Company

[Docket No. CP96–765–000]

Take notice that on September 4, 1996, Pacific Gas Transmission Company (PGT), 2100 Southwest River Parkway, Portland, Oregon, filed in Docket No. CP96–765–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a new tap near the terminus of PGT's Coyote Springs Extension in Morrow County, Oregon, for delivery of gas to Logan International, Inc. (Logan), under its blanket certificate issued in Docket No. CP82–530–000, [1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

To meet Logan's request, PGT proposes to install a tap at PGT's existing Coyote Springs Meter Station to provide Logan with a supply of natural gas for use in its food processing plant located immediately adjacent to PGT's Coyote Springs Extension. PGT will provide service through an existing but unused tap within its Coyote Springs Meter Station. PGT states the installation itself will consist simply in a change in the valves of the existing tap.

PGT states that the tap will deliver up to 1,115 Mcf per day under its Rate Schedules FTS–1 and/or ITS–1. PGT holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP90–1031–000.[2] PGT states that the proposed tap will have no impact on PGT's peak day or annual deliveries.

Comment date: October 25, 1996, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP96–767–000]

Take notice that on September 5, 1996, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–767–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization to upgrade the Town of Somerville (Somerville) M&R Station, an existing delivery point located in Fayette County, Tennessee, under Trunkline's blanket certificate issued in Docket No. CP83–84–000 pursuant to Section 7 of

[1] See, 21 FERC ¶ 62,237 (1982).

[2] See, 52 FERC ¶ 62,075 (1990).

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.

Trunkline proposes to upgrade the existing Somerville delivery meter (DP #80073, 87A–111) by replacing inefficient, undersized facilities with more efficient upgraded facilities so as to allow increased deliveries to be made at this delivery point. Trunkline states that based on discussions with Somerville, their area of distribution is growing considerably and that the upgraded facilities will ensure the ability of Trunkline to accommodate the anticipated increased growth.

Trunkline states the proposed project will consist of 1) removing and retiring two existing 2-inch turbine meters at milepost 393.18, downstream of Valve Section #87 in Fayette County, Tennessee, and 2) installing one 4-inch turbine meter and 2-inch bypass piping. Trunkline states that as a result of these proposed modifications, the maximum design capacity of the Somerville delivery point will increase from approximately 2.7 MMcf per day to approximately 7.1 MMcf per day at an operating pressure of 225 psig.

Trunkline states that the proposed upgrade of the Somerville delivery point will not increase the existing firm entitlements of Somerville at this time. Trunkline states that its transportation service to Somerville is provided pursuant to Rate Schedule SST (Small Shipper Transportation) and Section 284.223(a) of the Commission's Regulations.

The estimated cost to upgrade the existing facilities described herein is $22,400.

Comment date: October 25, 1996, in accordance with Standard Paragraph G 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 Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed 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. 96–23764 Filed 9–16–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Cases Filed With the Office of Hearings and Appeals; Week of August 19 Through August 23, 1996

During the Week of August 19 through August 23, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: September 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
8/19/96	James D. Hunsberger, Berlin, Germany.	VFA–0206	Appeal of an Information Request Denial. If Granted: The July 22, 1996 Freedom of Information Request Denial issued by the Office of Human Radiation Experiments would be rescinded, and James D. Hunsberger would receive access to certain DOE information.
8/19/96	Malcolm Parvey, Mansfield, Massachusetts.	VFA–0205	Appeal of an Information Request Denial. If Granted: The August 7, 1996 Freedom of Information Request Denial issued by Western Area Power Administration would be rescinded, and Malcolm Parvey would receive access to certain DOE information.
8/22/96	D.L. Cheaves, Alpharetta, Georgia	RR300–288	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 20, 1992 Dismissal Letter, Case Number RR300–288, issued to D.L. Cheaves would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
8/23/96	Rocky Flats Field Office, Golden, Colorado.	VSO–0110	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed at Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

Date	Name and location of applicant	Case No.	Type of submission
8/23/96	Wilford M. Anderson, Salt Lake City, Utah.	VFA–0207	Appeal of an Information Request Denial. If Granted: The March 4, 1996 Freedom of Information Request Denial issued by the Idaho Operations Office would be rescinded, and Wilford M. Anderson would receive access to certain Department of Energy information.

Date received	Name of refund proceeding/name of refund application	Case No.
8/19/96–8/23/96	Crude Oil Supplemental Applications	RK272–3884 thru RK272–3889

[FR Doc. 96–23736 Filed 9–16–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals Week of August 7 Through August 11, 1995

During the week of August 7 through August 11, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 4, 1996.

George B. Breznay

Director, Office of Hearings and Appeals.

Decision List No. 932

Appeals

Jay M. Baylon, 8/10/95, VFA-0059

Jay M. Baylon (Baylon) filed an Appeal from determinations issued to him on May 24, 1995, and June 28, 1995, by the DOE's FOI and Privacy Branch, Reference and Information Management Division and the Office of Arms Control and Nonproliferation (Arms Control) which partially denied a request for information that Baylon had filed under the Freedom of Information Act (FOIA). The request sought information concerning Westinghouse Electric Corporation's transfer of nuclear-related technology to the People's Republic of China. The determinations stated that Arms Control had produced all available documents responsive to Baylon's request. They further explained that any other relevant information either originated in another Executive Agency, or was classified and undergoing a declassification review. The Appeal challenged the adequacy of the search. In considering the appeal, the DOE found that the initial search was too narrow in its scope because the FOI Office did not direct Baylon's FOIA request to other DOE offices involved in nuclear-related transfers. Accordingly, Baylon's Appeal was granted and the matter was remanded to the FOI Office to initiate a new search.

Robert S. Foote, 8/10/95, VFA-0058

Robert S. Foote filed an Appeal from a determination issued to him by the DOE's Office of Health and Environmental Research (OHER) in response to a request from Mr. Foote under the Freedom of Information Act (FOIA). Mr. Foote sought the names of panelists who reviewed certain research grants. In considering the Appeal, the DOE found that the OHER properly withheld the panelists' names under Exemption 6 of the FOIA. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 8/11/95, VSO-0021

An Office of Hearings and Appeals Hearing Officer issued an opinion recommending restoration of the security clearance of an individual whose clearance had been suspended because the DOE had obtained derogatory information that fell within 10 C.F.R. § 710.8(h). The individual had been diagnosed as having a mental condition that could cause a significant defect in the individual's judgment or reliability. In reaching his conclusion, the Hearing Officer found that the testimony at the hearing supported the individual's contention that the results of his MMPI testing did not show the existence of a mental condition that affected his judgment or reliability.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–00032	08/10/95
Crude Oil Supplemental Refund Distribution	RB272–38	08/10/95
Jeannette, PA et al	RF272–96000	08/10/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Clarke County, Virginia	RF272–86668
Commonwealth Oil Refining Co., Inc	RF345–47
Concho County, Texas	RF272–89244

Name	Case No.
Fruehauf Trailer Corp	RR321–184
Green's Propane Gas Co., Inc	RF304–13618
McKelvey Oil Co.	RF304–13492
Middlewest Freightways, Inc	RF272–89914
Urich's Texaco Service Station	RF321–20928

[FR Doc. 96–23733 Filed 9–16–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 18 Through December 22, 1995

During the week of December 18 through December 22, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 4, 1996.

George B. Breznay,

Office of Hearings and Appeals.

Appeal

Keith E. Loomis, 12/21/95, VFA–0102

The DOE's Office of Hearings and Appeals (OHA) issued a determination denying a Freedom of Information Act (FOIA) Appeal filed by Keith E. Loomis (Loomis). Loomis appealed the Office of Naval Reactors' (ONR) withholding of information under Exemption 6 and contended that the ONR search for responsive documents was not adequate. OHA found that Exemption 6 was properly applied and that ONR's search for responsive documents was adequate.

Personnel Security Hearing

Albuquerque Operations Office, 12/18/95, VSO–0054

An Office of Hearings and Appeals Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the individual's testimony and the record, the Hearing Officer found that the individual, who has had five DWI arrests, has an illness or mental condition (substance dependence) that in the opinion of a board-certified psychiatrist causes, or may cause a significant defect in his judgment or reliability and that he is a user of alcohol to excess. Since the individual had only been abstinent for four months as of the time of the hearing and had not made a sufficient commitment to alcoholism counseling, the Hearing Officer also found that he was not rehabilitated or reformed. In addition, the Hearing Officer found that by failing to report three of his arrests to the DOE in a timely manner, the individual had engaged in conduct which tends to show that he was not honest, reliable, or trustworthy. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Implementation of Special Refund Procedures

Vessels Gas Processing Co., 12/21/95, VEF–0007

The DOE issued a Decision and Order implementing special refund procedures to distribute $1,564,223 (plus accrued interest) which Vessels Gas Processing Company (Vessels) remitted to the DOE pursuant to a Consent Order. The Decision sets forth refund application procedures for customers who claim that they were injured as a result of purchases of natural gas liquids and natural gas liquid products from Vessels during the period from September 1, 1973 though December 31, 1977. If any funds remain after meritorious claims are paid, the Decision provides that they will be used for indirect restitution through the States in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Atlantic Richfield Company/Associated Transport, Inc, 12/21/95, RF304–12217

LK, Inc., filed an application in the ARCO special refund proceeding with respect to purchases of ARCO products made by Associated Transport, Inc. LK, Inc., claimed to have acquired the right to the refund from Associated Transport while that firm was in bankruptcy. The assignment in question transferred claims in the ''Stripper Well'' litigation. Since the ARCO proceeding is unrelated to the Stripper Well Litigation, the DOE found that the assignment did not transfer Associated Transport's right to an ARCO refund. Accordingly, the application filed by LK, Inc., was denied.

Columbia LNG, 12/21/95, RC272–00326

The DOE issued a Decision and Order in the crude oil refund proceeding concerning an Application for Refund filed by Columbia LNG. Columbia was granted a refund based on the purchase of Natural Gas Liquids, some of which have now been shown to be either imported from foreign sources or were acquired as a result of a first sale into U.S. Commerce. These purchases are not eligible for refunds in this proceeding. Accordingly, the DOE rescinded that portion of Columbia's refund which was based on those ineligible gallons.

Mobil Oil Corp./Frontier Petroleum Company, 12/19/95, RR225–45

Frontier Petroleum Company filed a motion for modification seeking the reissuance of a refund check that had been issued to it from the Mobil Oil Corp. Special Refund Proceeding. According to Frontier, the check was issued to it in 1989, but was never cashed. The DOE denied Frontier's motion, finding that it was unable to trace the check and thereby lacked a reasonable basis to conclude that Frontier had not cashed the check.

Tajon, Inc., 12/21/95, RC272–325

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by Tajon, Inc. The DOE previously granted a crude oil refund to Tajon. Tajon had filed a Surface Transporters Escrow Settlement Claim Form and Waiver in the Stripper Well proceeding. This Claim Form and

Waiver was dismissed because Tajon had repeatedly failed to provide information which DOE required in order to process the claim. The DOE has determined that a Waiver is binding in situations where the Stripper Well application was dismissed for lack of information and the applicant was otherwise eligible for a Stripper Well refund. Accordingly, the refund granted to Tajon, Inc. is rescinded.

The 341 Tract Unit of the Citronelle Field, The 341 Tract Unit of the Citronelle Field/Litigating Refiners, 12/18/95, VFX–0006, RF345–50

The Office of the Hearings and Appeals directed that the DOE Controller take steps to disburse funds into nine escrow accounts pursuant to a court-approved settlement of litigation involving a $144 million escrow fund. That fund originated when exception relief was approved for The 341 Tract Unit of the Citronelle Field.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Bassman, Mitchell & Alfano	RR304–0065	12/21/95
Atlantic Richfield Company/Del Real Arco Service et al	RF304–13302	12/18/95
Atlantic Richfield Company/General Equities, Inc.	RR304–00070	12/19/95
Catherine Barber	RJ272–00003	12/21/95
Crude Oil Supplemental Refund Distribution	RB272–00027	12/18/95
Farmers Coop Oil Co.	RF272–97922	12/19/95
Park Region Coop	RF272–97925	
Morrow County Grain Growers	RF272–97930	
Jacobson Transport, Inc. et al	RF272–74695	12/19/95
Lester Chambers et al	RK272–00459	12/21/95
Limoneira Co. et al	RK272–00024	12/18/95
Lyndon Town School District et al	RF272–96200	12/19/95
MacFarlane Co.—USA, L.L.C. et al	RK272–02496	12/18/95
Mary Jo Pihlstrom et al	RK272–02662	12/21/95
Pat Marple et al	RK272–00507	12/21/95
Salomon Valley Coop et al	RF272–00172	12/18/95
Texaco Inc./Engler's Texaco	RF321–20736	12/18/95
Wilbert Frye Residuary Trust et al	RK272–02808	12/21/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Marol Realty, Inc.	RK272–00244
Montclair Arco	RF304–15389

[FR Doc. 96–23734 Filed 9–16–96; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of January 29 Through February 2, 1996

During the week of January 29 through February 2, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 4, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeal

PSI Energy, Inc., 1/30/96, VEA–0001

PSI Energy, Inc. (PSI) filed an Appeal from a determination issued by the DOE's Office of Environmental Management (OEM). PSI claimed that: (i) the OEM erroneously determined its liability for payment into the Uranium Enrichment Decontamination and Decommissioning Fund (D&D Fund) established under the Energy Policy Act of 1992; (ii) Indiana state law would prohibit PSI from passing through its assessment to its ratepayers; and (iii) the assessment of utilities for payment into the D&D Fund was an unconstitutional taking of property. The DOE found that: (i) the firm was properly assessed for uranium enrichment services that it purchased from the DOE and did not sell in the secondary market; (ii) Indiana state law would be preempted by the federal Energy Policy Act; and (iii) while the DOE will ultimately defer to the rulings of the federal courts, the collection of assessments will continue while the courts are considering the constitutionality of the relevant provisions of the Energy Policy Act. Accordingly, PSI's Appeal was denied.

Personnel Security Hearings

Albuquerque Operations Office, 1/31/96, VSA–0020

The Director of the Office of Hearings and Appeals issued an Opinion concerning a Request for Review that was filed by the DOE's Office of Security Affairs (OSA). In its submission, the OSA requested that a security clearance matter be remanded to the Hearing Officer so that the Hearing Officer could render an opinion concerning an individual's eligibility for access authorization. In the Hearing Officer's initial Opinion, she stated that because the individual attended, but did

not participate in, his security clearance hearing, she would not address the merits of the individual's eligibility for a clearance, but would instead transfer the proceeding to the Manager of DOE/Albuquerque for a final determination as to the individual's eligibility. In the Director's Opinion, he stated that the regulations governing these proceedings do not contemplate the transferral of a security clearance matter to a DOE Manager under the circumstances in this case. He added that because a hearing was held and additional testimony was received, an evaluation by the Hearing Officer of the individual's eligibility for access authorization was required. Accordingly, the Director remanded the matter to the Hearing Officer for the issuance of such an evaluation.

Rocky Flats Field Office, 1/30/96, VSO–0046

An Office of Hearings and Appeals Hearing Officer issued an opinion against restoring the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 C.F.R. § 710.8(f). In reaching his conclusion, the Hearing Officer found that the individual deliberately misrepresented, falsified, or omitted significant information during the Personnel Security Interview.

Rocky Flats Field Office, 2/7/96, VSO–0060

An OHA Hearing Officer issued an opinion on a request for review from an individual employed by a Rocky Flats contractor whose DOE security clearance had been suspended. The individual's ''Q'' access authorization was suspended after Rocky Flats security officials had received information from Personnel Security Interviews (PSIs) with two confidential sources about the individual's extensive marijuana use in the five or six years immediately after he had signed a DOE Drug Certification in 1980. At the hearing which was held in this case, neither of the two sources would testify about the instances of marijuana use or distribution by the individual that they had reported in their PSIs. However, the individual himself refused to testify in his own behalf at the hearing, and submitted no direct evidence to contravene the derogatory information in the statements by the two sources in their PSIs. Instead, the individual relied upon statements made in his own PSIs with Rocky Flats security personnel, in which he categorically denied any post-1980 marijuana use. After considering the record in this case, the Hearing Officer concluded that the individual had failed to meet his burden of coming forward with evidence to show that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Implementation of Special Refund Procedures

OXY USA, Inc., 01/31/96, VEF–0030

The DOE issued a Decision and Order setting forth procedures for the distribution of $275 million (plus interest) in alleged overcharges remitted or to be remitted to the DOE by Occidental Petroleum Corporation and its wholly owned subsidiary OXY USA, Inc. (OXY). The DOE determined that these funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986). Accordingly, the DOE determined that 20 percent should be reserved for Subpart V Claimants and the remaining 80 percent should be divided equally between the federal government and the states.

Refund Applications

Citronelle/Texas Cities Refining, Inc., et. al., 1/30/96, RF345–1, et. al.

The DOE issued a Supplemental Order disbursing $144,204,002 from an escrow account in connection with the 341 Tract Unit of the Citronelle Field. The disbursements were made pursuant to a Settlement Agreement that was approved by the U.S. District Court for the Southern District of Texas on December 6, 1995.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alaska Gold Company et al	RC272–327	01/30/96
Atlantic Richfield Company/Oscar B. Chao et al	RF304–13239	01/30/96
Metromedia Co et al	RF272–95102	01/30/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Airline Snack Bar	RF300–19839
Albuquerque Operations Office	VSO–0064
Anderson Super Gulf-Parkway	RF300–18803
Bayer & Mingolla Industries, Inc	RF300–21419
Brink's, Inc	RF300–15179
Buffalo Aeronautical	RF300–16947
Central Telephone Co. of Florida	RF300–14816
Charles F. Morris	RF300–21659
Continental Baking Co	RF300–21479
D.L. Stowe Trucking	RF300–18841
Daniels Gulf	RF300–19586
Dans Rental	RF300–19585
Dix Gulf	RF300–19588
Ellex Transportation	RF300–13113
Garden Street Gulf	RF300–15086
Garvie Marks Gulf	RF300–21406
Hilltop Gulf	RF300–18730
Honeywell Inc	RF272–67216
J.D.'s Gulf	RF300–13159
Jackson & Michael Gulf Service	RF300–19659

Name	Case No.
John L. Sutton, Jr	RF300–21420
Lake & Sam Williams Gulf Dist	RF300–13245
Lee-Hy Paving Corporation	RR272–137
Mart Gulf	RF300–16505
Minden City Oil & Gas Co	RF300–19560
Murphey's Gulf & U-Haul	RF300–19528
Richland Operations Office	VSO–0056
Sam's Auto Service	RF300–10924
Sanders Gulf	RF300–18795
Wade's Rent-a-Car	RF300–18092
Waite, Schneider, Bayless & Chesley	VFA–0118
Wiley Fuel Oil	RF300–19541
Williams Gulf	RF300–18405

[FR Doc. 96–23735 Filed 9–16–96; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of August 5 Through August 9, 1996

During the week of August 5 through August 9, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: September 9, 1996.

George B. Breznay

Director, Office of Hearings and Appeals.

Decision List No. 984

Appeals

Marlene Flor, 8/5/96, *VFA–0184*

Marlene Flor filed an Appeal from a determination issued to her on May 16, 1996 by the Department of Energy's Albuquerque Operations Office (AO) which denied a request for information she had filed under the Freedom of Information Act (FOIA). The request sought the time and attendance sheets for each employee of the Kirtland Area Office Contracts and Business Management Organization (CBMO). AO released redacted copies of the requested records from which the leave codes and description of the type of leave were deleted. AO determined, pursuant to Exemption 6 of the FOIA, that disclosure of this information would violate the privacy of the employees and would not be in the public interest. Flor's Appeal challenged the application of Exemption 6 to the withheld information. She contended that the ''type of leave one takes is not personal in the same sense as one's date of birth, employment history, etc., as AO claims * * *.'' Flor further contended that release of the requested information would further the public interest because it would reveal how AO treats its whistleblowers. In considering the Appeal, the DOE found that although the requested information is not as significantly private as other personal information such as home addresses and social security numbers, the public release of this information will nevertheless result in, at the least, a minimal invasion of privacy. DOE further found that there was no apparent public interest to balance against the minimal invasion of personal privacy and therefore AO properly withheld the requested information. Accordingly, the Appeal was denied.

Stand of Amarillo, Inc., 8/9/96, *VFA–0157*

Stand of Amarillo, Inc. (STAND) filed an Appeal of a determination issued to it by the Albuquerque Operations Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). STAND had requested documents it saw as a protestant before the Texas Natural Resource Conservation Commission concerning two environmental permits for the Pantex Plant which the DOE and Mason & Hanger-Silas Mason Co. (Mason & Hanger), the prime contractor for the Pantex Plant, had jointly requested. Although a few documents were released to STAND, Mason & Hanger claimed the vast majority are internal legal documents, contractually its property and not subject to the FOIA. In considering the Appeal, the DOE found that after STAND filed its Appeal, both environmental permits were issued. Under these conditions, both the DOE and Mason & Hanger previously had agreed to search and release records to STAND. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Albuquerque Operations Office for a new determination. However, because this is the second Appeal on STAND's request, the DOE believes that a new determination should be issued within ninety days of the Albuquerque Operations Office's receipt of this Decision and Order.

Personnel Security Hearing

Oakland Operations Office, 8/7/96, *VSO–0094*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because he had tested positive for use of amphetamines (speed). Although the individual admitted to using the illegal drug, he attempted to minimize the seriousness of the event by claiming he had only used a very small amount of speed on a one-time only basis with a friend from out of town. The Hearing Officer found that the individual had failed to corroborate his account of the drug use, because he did not produce witnesses to support his version of the events surrounding the use of speed, particularly the out of town friend. She also found that the testimony of the individual's psychologist did not strongly support the individual's claim of rehabilitation from drug use. Accordingly, the Hearing Officer found

that the individual's access authorization should not be restored.

Request for Exception

R.W. Hays Company, 8/8/96, *VEE–0026*

R.W. Hays Company filed an Application for Exception from the requirement that it file Form EIA–782B, the ''Reseller/Retailer's Monthly Petroleum Product Sales Report.'' The DOE found that the firm was not affected by the reporting requirement in a manner significantly different from other similar firms, and consequently was not experiencing a special hardship, inequity, or unfair distribution of burdens. Accordingly, the firm's Application for Exception was denied.

Refund Applications

Gulf Oil Corp./Walnut Creek Gulf, 8/8/96, *RF300–16584*, *RF300–21751*

The DOE issued a Decision and Order, denying two refund applications filed on behalf of Walnut Creek Gulf (Walnut Creek) in the Gulf Oil Corporation refund proceeding. The first applicant claimed the right to any refund owing his deceased son, who was a partner in the operation of the outlet during part of the refund period. The second applicant was the other partner in the outlet. In considering the first application, the DOE determined that the son's will, upon which the father based his claim, had specifically stated that the father was not a beneficiary. Accordingly, the DOE determined that the first applicant had not established his right to a Gulf refund. The DOE did not consider the second application because it was filed after the deadline for Gulf applications.

Veterans Administration, 8/7/96, *RF272–47498*

The DOE issued a Decision and Order granting an Application for Refund filed by the Veterans Administration, a federal agency (now the Department of Veterans Affairs), in the Subpart V crude oil refund proceeding. A group of States and Territories (States) and Philip P. Kalodner, Counsel for Utilities, Transporters, and Manufacturers (Kalodner) objected to the application on the grounds that the DOE, by signing the Stripper Well Settlement Agreement, waived the rights of all federal agencies to receive a crude oil refund. The DOE found that while the state and federal governments are designated conduits for indirect restitution under the Settlement Agreement, neither waived its right to direct restitution with respect to its own purchases of refined petroleum products. The refund granted to the applicant in this Decision was $27,779.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bair Transport, Inc	RC272–347	08/09/96
Crude Oil Supple Refund Distribution	RB272–00079	08/09/96
Crude Oil Supplemental Refund Distribution	RB272–00083	08/09/96
Gulf Oil Corporation/Haroutioun Jerejian	RF300–21835	08/06/96
Gulf Oil Corporation/Jordan Oil Company et al	RF300–18708	08/05/96
Koch Materials Company	RG272–307	08/08/96
Kraft General Foods	RF272–90209	08/07/96
Malone Brothers' Construction et al	RF272–87022	08/07/96
Master-Jackson Paving Company	RK272–931	08/08/96
Patrick Boyle et al	RG272–00806	08/05/96
Total Transport, Inc	RA272–74	08/06/96
Weston Trucking et al	RK272–01144	08/09/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Adobe Mining Co	RG272–878
Albuquerque Operations Office	VSO–0095
Arcadian Fertilizer Inc. L.P	RF272–92584
Ashland Exploration, Inc	RF272–98196
Atlanta Gas Light Co	RF272–98203
B.P. Short & Son Paving Co., Inc	RG272–910
Betty B. Plank	VFA–0187
Borg-Warner Security, Inc	RF272–98182
Burlington Basket Co	RF272–98201
City of Newark	RF272–98131
Comfort Winders	RF272–99052
Cummings-Moore Graphite Co.	RF272–98197
Edisto Resources Corp	RF272–98204
Energy West	RF272–98167
Farmers Cooperative Company	RG272–968
Farmers Cooperative Exchange	RG272–897
Farmers Elevator Co	RG272–807
Farmers Elevator Cooperative	RG272–900
Farmers Elevator Cooperative	RG272–903
Grand Canyon Helicopters	RF272–97959
Gulf States Manufactuters, Inc	RF272–89336
Hess Brothers, Inc	RG272–852
Magee Co	RF272–98195
Medical Center of Central Massachsetts	RG272–977
Millcraft Industries, Inc	RF272–98171
Motor Transport Company	RR272–241
Omy Aviation, Inc	RF272–98188

Name	Case No.
Omya, Inc	RF272–98191
Peabody Coal Company	RG272–885
Penn Fuel Gas, Inc. and Subsidiaries	RF272–98245
Pluess-Staufer Inc	RF272–98186
Raffi and Swanson, Inc	RG272–815
Rockbridge Farmers Co-op, Inc	RG272–805
Sanborn Farmers Union Oil Cooperative	RF272–97806
Town of Clarkstown	RG272–888
Truman Farmers Elevator Co	RG272–889
Valley Gas Co	RF272–98168
Vermont Talc, Inc	RF272–98187
Vulcan Forge and Machine Co	RF272–98249
White Pigment Corp	RF272–98190
William Refrigerated Express	RF272–97873

[FR Doc. 96–23737 Filed 9–16–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5610–2]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, (''Act''), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (''EPA'') on August 23, 1996, in a lawsuit filed by the Sierra Club Legal Defense Fund. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. § 7604(a), concerns, among other things, EPA's alleged failure to meet a mandatory deadline under section 608(a)(2) of the Clean Air Act. The proposed partial consent decree provides that EPA shall take certain regulatory actions under section 608(a)(2) in accordance with specified schedules.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed partial consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final partial consent decree will establish deadlines for specific regulatory actions under § 608(a)(2) of the CAA.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on August 23, 1996. Copies are also available from Jacquie Jordan, Cross-Cutting Issues Division (2322), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7622. Written comments should be sent to Jan M. Tierney at the address above and must be submitted on or before October 17, 1996.

Dated: August 30, 1996.

Scott Fulton,

Acting General Counsel.

[FR Doc. 96–23788 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5610–6]

Gulf of Mexico Program Policy Review Board; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) Gulf of Mexico Program Policy Review Board (PRB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. The purpose of the PRB is to provide advice and counsel to State and Federal agencies on issues associated with environmental management and policy of the Gulf of Mexico. It is determined that the PRB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to James D. Giattina, Designated Federal Official, Gulf of Mexico Program PRB, U.S. EPA, Director of the Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, Mississippi 39529.

Dated: September 9, 1996.

James D. Giattina,

Designated Federal Official.

[FR Doc. 96–23651 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5610–7]

Science Advisory Board; Notification of Public Advisory Committee Meeting Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Human Exposure and Health Subcommittee (HEHS) of the Science Advisory Board's (SAB) Integrated Risk Project will meet on October 9–10, 1996, in room 3075, Building 90, at the Ernest O. Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley CA 947720. The meeting will begin at 9:00 a.m. and end no later than 5:00 p.m. on each day. All times noted are Pacific Time. This meeting is open to the public, but prior registration is required (see below).

The main purpose of the meeting is to continue discussions (initiated at the Committee's previous meeting on June 13/14, 1996) of human exposure (and their consequences) to various pollutants and to consider the potential for risk reduction. Members of the Committee will report back on their efforts to ''pilot test'' four possible approaches for assessing exposure and risk. The Subcommittee's activities are part of an SAB project to update the 1990 SAB report, Reducing Risk: Setting

Priorities and Strategies for Environmental Protection. In a letter dated October 25, 1995, to Dr. Matanoski, Chair of the SAB Executive Committee, Deputy Administrator Fred Hansen charged the SAB to: 1) develop an updated ranking of the relative risk of different environmental problems based upon explicit scientific criteria; 2) provide an assessment of techniques and criteria that could be used to discriminate among emerging environmental risks and identify those that merit serious, near-term Agency attention; 3) assess the potential for risk reduction and propose alternative technical risk reduction strategies for the environmental problems identified; and 4) identify the uncertainties and data quality issues associated with the relative rankings. The project will be conducted by several SAB panels, including HEHS, working at the direction of an ad hoc Steering Committee established by the Executive Committee.

Single copies of Reducing Risk can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW, Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW, Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via the INTERNET at: Winston.Mary@EPAMAIL.EPA.GOV.

Anyone wishing to attend the meeting, and/or make an oral presentation to the Committee should register with Samuel Rondberg, Designated Federal Official for the HEHS, no later than 4:00 p.m., October 3, 1996, at (202) 260–2559 or via the INTERNET at Rondberg.Sam@EPAMAIL.EPA.GOV. Prior registration is required for admission to the Lawrence Berkeley Laboratory complex. The registration request should include name and affiliation of the attendee, and indicate if parking space at the laboratory complex will be required. Anyone wishing to make a presentation should also provide an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Rondberg no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: September 5, 1996.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 96–23787 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5611–4]

Proposed De Minimis Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Golden, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122 (I) (1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed de minimis settlement under section 122 (g), concerning the Colorado School of Mines Research Institute site in Golden, Colorado (Site). The proposed Administration Order on Consent (AOC) requires five (5) Potentially Responsible Parties to Pay an aggregate total of $215,640.36 to address their liability to the United States Environmental Protection Agency (EPA) related to response actions taken or to be taken at the Site.

OPPORTUNITY FOR COMMENT: Comments must be submitted by October 17, 1996.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Maureen O'Reilly, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Colorado School of Mines Research Institute site de minimis settlement (EPA Docket No. CERCLA–VIII–96–17).

FOR FURTHER INFORMATION CONTACT: Maureen O'Reilly, Enforcement Specialist, at (303) 312–6402.

SUPPLEMENTARY INFORMATION: Notice of section 122 (g) de minimis settlement: In accordance with section 122(I)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the following five (5) parties, for the following amounts:

Energy Fuels Nuclear, Inc.....$326,800.73
Kennecott Corporation, Kennecott Holdings Corporation, and Kennecott Utah Copper Corporation $30,285.75
Lockheed Corporation $554.20

By the terms of the proposed AOC, these parties will together pay $215,640.36 to the Hazardous Substance Superfund. This payment represents approximately .035% of the total anticipated response costs for the Site upon which this settlement is based.

In exchange for payment, EPA will provide the settling parties with a limited covenant not to sue for liability under sections 106 and 107(a) of CERCLA, including liability for EPA's past costs, the cost of the remedy, and future EPA oversight costs, and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act).

The settlement amount that each PRP will pay, as shown above, depends upon whether they contributed radioactive hazardous substances or non-radioactive hazardous substances to the Site. The per pound cost for non-radioactive hazardous substances is $1.54. The per pound cost for radioactive hazardous substances is $3.08. Settlement amounts are calculated by multiplying these per pound costs by the number of pounds of hazardous substances a party sent to the Site (Base Amount), adding a premium of either 30% or 130% of the Base Amount, as specified by each PRP in the AOC, and adding a $200 administrative fee. For parties paying a 30% premium (Energy Fuels Nuclear, Inc.), there is an exception to the covenant not to sue if total response costs at the Site exceed $6,000,000. For

parties paying a 130% premium (the Kennecot entities and Lockheed Corporation), there is an exception to the covenant not to sue if total response costs at the Site exceed $20,000,000.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to this proposed de minimis settlement.

A copy of the proposed AOC may be obtained from Maureen O'Reilly (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Colorado 80202–2405, (303) 312–6402. Additional background information relating to the de minimis settlement is available for review at the Superfund Records Center at the above address.

It is So Agreed:

Dated: September 9, 1996.

Patricia D. Hull,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 96–23789 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5611–9]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to section 309(g) of the Federal Clean Water Act, 33 U.S.C. 1319(g), EPA is authorized to assess a Class II administrative penalty of up to $125,000 against any person who, without authorization, discharges a pollutant to a water of the U.S., as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, and its implementing regulations. As required under section 309(g)(4), 33 U.S.C. 1319(g)(4), EPA Region IX hereby gives notice of the following proposed Class II penalty action and the public's opportunity to comment on it.

On August 13, 1996, EPA Region IX commenced proceedings to assess a Class II penalty of $115,000 against the City of San Diego, San Diego County, California 92101 (In the Matter of City of San Diego, Kearny Mesa Site, EPA Docket No. CWA–IX–FY94–46) by filing a complaint with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105 (415) 744–1389. The complaint alleges that between July 1992 and May 1993, on at least two occasions, a lessee of the City of San Diego, used earth moving or other construction equipment to discharge earthen material and chipped vegetation (bark) into waters of the United States (i.e., vernal pool wetlands) on property owned and controlled by the City of San Diego, on Kearny Mesa, California. The complaint further alleges that these discharges never received required authorization from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, 33 U.S.C. 1344.

DATES: The public is invited to submit written comments on this proposed penalty action during a thirty day comment period.

ADDRESSES: Written comments on this proposed action should be submitted to the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of 40 CFR part 22, review the complaint or other documents filed by the parties in this proceeding, comment on the proposed penalty assessment, or participate in any hearing which may be held should contact the regional clerk at the address or phone number listed above. Unless otherwise noted, the public record for the proceeding is located in the regional office at the address above and is available for public inspection during normal business hours. All information submitted by the respondent will be part of the public record and subject to provisions of law restricting public disclosure of confidential information.

SUPPLEMENTARY INFORMATION: This penalty proceeding and the procedures for public comment and participation are governed by EPA's ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits,'' at 40 CFR part 22, which is available at most libraries. To provide an opportunity for public comment, EPA will not take final actions in the proceeding prior to thirty (30) days after publication of this notice.

Dated: September 4, 1996.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 96–23786 Filed 9–16–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2152]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 12, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full texts of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed on or before October 2, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject

Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. (WT Docket No. 96–59) *

Amendment of the Commission's Cellular/PCS Cross-Ownership Rule. (GN Docket No. 90–314)

Number of Petition Filed: 8.

* This Public Notice includes the petition filed by Eliot J. Greenwald, Attorney for the National Paging & Personal Communications Association and J. Jeffrey Craven, Attorney for Personal Technology Service, Inc. and Digivox Corporation. A previous Public Notice, Report No. 2146, was released on August 7, 1996 and published in the Federal Register on August 13, 1996, listed only seven petitions. We are therefore placing all eight petitions on public notice at this time.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–23675 Filed 9–16–96; 8:45 am]

BILLING CODE 6712–01–M

Correction to Report No. 2151; Petition for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 12, 1996.

Report No. 2151, released September 6, 1996 listed the below Petition for Reconsideration. This petition was listed on a previous Public Notice, released August 30, 1996, therefore the September 6, was released in error.

Subject: Bell Operating Company Provision of Out-of-Region Interstate,

Interexchange Services. (CC Docket No. 96–21).

Filed By: Frank W. Krogh and Donald J. Elardo, Attorneys for MCI Telecommunications Corporation on 08/08/96.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–23676 Filed 9–16–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0932]

10 Percent Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is adopting a change in the manner in which interest earned on certain securities held by a company in an underwriting or dealing capacity is treated in determining whether the company is engaged principally in underwriting and dealing in securities for purposes of section 20 of the Glass-Steagall Act. In order to ensure compliance with section 20, the Board requires that the revenue a company derives from underwriting and dealing in securities that a member bank may not underwrite or deal in (ineligible securities) not exceed 10 percent of the total revenue of the company. The Board is amending its section 20 orders to specify that interest earned on the types of debt securities that a member bank may hold for its own account is not to be treated as revenue from underwriting or dealing in securities for purposes of section 20. Interest on these securities will continue to be included in total revenue. Section 20 subsidiaries may use this method to compute compliance with the revenue limitation in reports filed with the Board after the effective date of this amendment.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel (202/452–3236), Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division; Michael J. Schoenfeld, Senior Securities Regulation Analyst (202/452–2781), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf, Dorthea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, D.C.

SUPPLEMENTARY INFORMATION:

Background

Beginning with orders issued in 1987, the Board has authorized certain nonbank subsidiaries of bank holding companies, so-called section 20 subsidiaries, to underwrite and deal in ineligible securities.[1] In order to ensure compliance with section 20 of the Glass-Steagall Act, the Board provided that the gross revenue derived by a section 20 subsidiary from underwriting and dealing in ineligible securities not exceed 10 percent of the total gross revenue of the subsidiary, when revenue is averaged over a rolling 8-quarter period.[2]

For purposes of complying with the 10 percent revenue limit, section 20 subsidiaries have reported all interest they earn on third-party ineligible debt securities held in an underwriting or dealing capacity as revenue derived from underwriting and dealing in ineligible securities.[3] Questions have been raised as to whether this treatment is appropriate for interest earned on debt securities that a member bank is authorized to hold for its own account under the Glass-Steagall Act. Accordingly, on July 31, 1996, the Board sought public comment on a proposal to amend its section 20 orders to provide that interest earned by a section 20 subsidiary on the types of debt securities that a member bank may hold would no longer be treated as ineligible revenue.[4]

Summary of Public Comments

The Board received a total of 38 public comments in response to its proposal. All but two of the commenters expressed support for the Board's proposal for the reasons noted in the Board's request for public comments.

One commenter noted that the Board's request for comment on the proposal did not address either the effect the proposal would have on section 20 subsidiaries, or the possibility that the proposal could permit section 20 subsidiaries to manipulate the revenue limitation.[5] This commenter suggested that the Board defer action on the proposal until it examined these issues and included the result of that examination in a second notice requesting public comment on the proposal. More generally, the commenter stated that comprehensive reform and modernization of the financial services industry by Congress is the only means by which banks and securities firms will be able to compete and affiliate on a fair and rational basis. For this reason, the commenter urged the Board to defer action on this and other proposed amendments to its section 20 orders.

Several commenters urged the Board to clarify or expand its proposal. Five commenters opined that the Board should allow section 20 subsidiaries to treat income derived from holding *any* security (as opposed to only those securities a member bank may hold) as eligible revenue—that is, toward total revenue but not ineligible revenue. Four commenters also asserted that section 20 subsidiaries should be able to treat the profit earned from trading in securities for investment purposes, as opposed to dealing in securities, as eligible revenue, particularly with respect to securities that member banks may invest in.

Discussion

After reviewing the public comments, and for the reasons set forth below, the Board has decided to adopt the proposed amendment without change. The Board believes that it is not appropriate to treat interest earned on securities that a member bank is expressly authorized by the Glass-Steagall Act to hold as revenue from underwriting and dealing in ineligible securities.[6] Banks hold such securities for their own account, and buy and sell them on a relatively frequent basis as part of managing their investment portfolio. In recognition of this activity, the Financial Accounting Standards Board changed its accounting rules at the end of 1993 to establish separate accounting treatment for bank portfolio securities that are ''available for sale''

[1] *E.g., Citicorp*, 73 Federal Reserve Bulletin 473 (1987), *aff'd, Securities Industry Association* v. *Board of Governors*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988).

[2] Section 20 provides that a member bank may not be affiliated with a company that is ''engaged principally'' in underwriting and dealing in securities. 12 U.S.C. 377. Section 20 does not prohibit a bank affiliate from underwriting and dealing in securities that banks may underwrite and deal in directly (eligible securities).

[3] Instructions for Preparation of the Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank-Ineligible Securities Underwriting and Dealing, Form FR Y–20. Schedule SUD-I, Line Item 5 (December 1994)(FR Y–20 Instructions); *see also* ''Structuring Bank-Eligible and Bank-Ineligible Transactions'' in FR Y–20 Instructions.

[4] 61 FR 40642 (1996).

[5] The other commenter who urged the Board not to adopt this proposal did not set forth any reasons for opposing it.

[6] 12 U.S.C. 24 (Seventh), 335; 12 CFR 1.3.

and not intended to be held to maturity.[7]

Furthermore, the Board believes that there is a distinction between the interest earned by a section 20 subsidiary from holding these kinds of securities and the profit made from underwriting or reselling them. The profit or loss a section 20 subsidiary earns on the resale of ineligible debt securities the subsidiary holds in inventory is the revenue that should be attributed to performing the functions of dealing in or underwriting these securities, the critical element of which is the actual offering and sale of the instruments involved.[8] On the other hand, the interest a subsidiary earns on ineligible debt securities while it holds them in inventory is revenue best attributed to holding the securities as a member bank may do under the Glass-Steagall Act.[9]

Accordingly, the Board is amending its section 20 orders to specify that a section 20 subsidiary may treat interest earned on the types of debt securities that a member bank may hold for its own account, either for investment or as an underwriter or dealer, as eligible revenue in calculating compliance with the Board's revenue limitation.

With respect to the suggestion to defer action on this proposal, the Board does not believe that the impact of this interpretation on any particular firm is relevant to whether the interpretation properly reflects the requirements of section 20. However, the Board has used proprietary data to consider the impact the proposal could be expected to have on each section 20 subsidiary based on its activities and portfolio composition during prior quarters. Review of reports and other data provided by the section 20 subsidiaries indicates that the impact of the change will vary considerably depending on the products offered and inventory maintained by each subsidiary, as well as the profitability of those products.[10]

Similarly, the Board does not believe that there would be any benefit in seeking additional public comment regarding manipulation of the revenue test that could arise from the proposed amendment. The Board does not believe that the amendment would lead to manipulation of the test. Interest earned on a security is sufficiently distinct from the profit earned or loss incurred on a security as to allow the Board to monitor the appropriate classification of revenue. As noted, the Board's quarterly report for section 20 subsidiaries requires that they report interest income and dividends received separately from profit or loss.

Furthermore, the Board has supervised revenue test compliance by section 20 subsidiaries for nine years, and has developed substantial experience in ensuring that section 20 subsidiaries properly classify a variety of different types of revenue in computing compliance with the limitation on ineligible revenue.[11] Section 20 subsidiaries have adopted policies, procedures, accounting systems, and related controls to ensure proper classification of revenues. The Board expects section 20 subsidiaries will amend accounting systems and controls as necessary, and that internal auditors will continue to monitor revenue test compliance and revise their audit programs in response to the Board's action.

The Board will review suggestions for further changes offered by commenters at a later date.

By order of the Board of Governors of the Federal Reserve System, September 11, 1996.[12]

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–23728 Filed 9–16–96; 8:45 am]

BILLING CODE 6210–01–P

[7] Statement of Financial Accounting Standards No. 115.

[8] For purposes of the section 20 revenue limitation, the Board has viewed ''public sale'' to include the activity of dealing in securities—the process of buying and reselling to the public specific securities as part of an ongoing, regular business. *E.g., Citicorp, supra,* at 506–08. The term ''underwriting'' generally refers to the process by which new issues of securities are offered and sold to the public. *E.g., Securities Industry Association* v. *Board of Governors,* 807 F.2d 1052, 1062–66 (D.C. Cir. 1986), *cert. denied,* 483 U.S. 1005 (1987).

[9] This distinction is further reflected in the current reporting requirements for section 20 subsidiaries and in Generally Accepted Accounting Principles for bank holding companies, which prescribe that interest revenue be reported separately from gains or losses on securities owned. FR Y–20 Instructions, Statement of Income, Schedule SUD-I, Line Items 2, 5); Securities and Exchange Commission FOCUS Report (Form X–17A–5 Part II) and instructions thereto. Generally Accepted Accounting Principles incorporate the format of the FOCUS Report.

[10] The change will have the greatest impact on those section 20 subsidiaries with debt and equity underwriting powers who are primary dealers and maintain substantial inventories of government and investment-grade ineligible debt securities. Data for two recent quarters indicates that if the change had been in effect, quarterly ineligible revenue for each such company would have decreased between 19 percent and 79 percent.

[11] As noted above, section 20 subsidiaries currently report interest income and dividends received separately from profit or loss on Form FR Y–20.

[12] Voting for this action: Chairman Greenspan, Vice Chair Rivlin, and Governors Kelley, Lindsey, Phillips, Yellen and Meyer.

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 23, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jon and Angela Pope, both of Hoxie, Kansas; to acquire an additional 29 percent, for a total of 52 percent, and Lois Madison, Hoxie, Kansas, to acquire an additional 9 percent, for a total of 30 percent, of the voting shares of Northwest Bancshares, Inc. Rexford, Kansas, and thereby indirectly acquire Peoples State Bank, Colby, Kansas.

Board of Governors of the Federal Reserve System, September 9, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23483 Filed 9-16-96; 8:45 am]

BILLING CODE 6210-01-F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than October 1, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Thomas Wayne Colbert, Forest, Mississippi; to acquire an additional 7.21 percent, for a total of 32.04 percent; Ann Brand Colbert, Forest, Mississippi; to acquire a total of 3.48 percent; and Thomas Wayne Colbert, Jr., Forest, Mississippi; to acquire an additional 6.93 percent, for a total of 7.09 percent, of the voting shares of Community Bancshares of Mississippi, Inc., Forest, Mississippi, and thereby indirectly acquire Community Bank of Mississippi, Forest, Mississippi.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James Henry Keeline, Yakutat, Alaska, and Richard Orville Carpenter, Ruthven, Iowa; each to acquire an additional .92 percent for a total of 55 percent of the voting share of Ruthven Investment Limited, Ruthven, Iowa, and thereby indirectly acquire Ruthven State Bank, Ruthven, Iowa. Notificants will jointly control the shares as co-executors of the Jennie M. Keeline (deceased) estate.

Board of Governors of the Federal Reserve System, September 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23279 Filed 9–16–96; 8:45 am]

BILLING CODE 6210–01–F

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 October 11, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Smoky Mountain Bancorp, Inc., Gatlinburg, Tennessee; to acquire 100 percent of the voting shares of BankFirst, Knoxville, Tennessee.

2. Upson Bankshares, Inc., Thomaston, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Upson, Thomaston, Georgia.

3. Wilson Bank Holding Company, Lebanon, Tennessee; to acquire 50 percent of the voting shares of Community Bank of Smith County, Carthage, Tennessee (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Illinois Company Employee Stock Ownership Trust, Swansea, Illinois; to retain an additional 1.90 percent, for a total of 33.10 percent, of the voting shares of Union Illinois Company, Swansea, Illinois, and thereby indirectly retain State Bank of Jerseyville, Jerseyville, Illinois, and Union Bank of Illinois, Swansea, Illinois.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirstBank Holding Company of Colorado ESOP, Lakewood, Colorado; to acquire 26.7 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of Arvada, N.A., Arvada, Colorado; FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; FirstBank of Breckenridge, N.A., Breckenridge, Colorado; FirstBank of Douglas County, N.A., Castle Rock, Colorado; FirstBank of Colorado Springs, Colorado Springs, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Longmont, Longmont, Colorado; FirstBank of Northern Colorado, Fort Collins, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Lakewood, Colorado; FirstBank of South Jeffco, Littleton, Colorado; FirstBank of Lakewood, N.A, Lakewood, Colorado; First Bank of Littleton, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank North, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; and FirstBank, N.A., Palm Desert, California.

2. Nolte Family Limited Partnership, Kenesaw, Nebraska; to become a bank holding company by acquiring 35 percent of the voting shares of First Kenesaw Company, Kenesaw, Nebraska, and thereby indirectly acquire Adams County Bank, Kenesaw, Nebraska.

In connection with this application, Nolte Family Partnership has also applied to engage through First Kenesaw Company, in the sale of general insurance in towns less than 5,000 in population, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Baird Bancshares, Inc., Baird, Texas, First Baird Bancshares of Delaware, Inc., Dover, Delaware, Weatherford Bancshares, Inc., Weatherford, Texas, and First Weatherford Bancshares, Inc., Weatherford, Texas; to acquire 88.81 percent of the voting shares of First Munday Bancshares, Inc., Munday,

Texas, and thereby indirectly acquire First Munday Bancshares of Delaware, Inc., Munday, Texas, and First National Bank in Munday, Munday, Texas.

2. Paradigm Bancorporation, Inc., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Paradigm Delaware Bancorporation, Inc., Dover, Delaware, and thereby indirectly acquire Woodcreek Bank, Houston, Texas.

In connection with this application, Paradigm Delaware Bancorporation, Inc., Dover, Delaware, has also applied to become a bank holding company by acquiring 100 percent of the voting shares of Woodcreek Bank, Houston, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Humboldt Bancorp, Eureka, California; to acquire 100 percent of the voting shares of Humboldt Bank Nevada, Las Vegas, Nevada (in organization).

Board of Governors of the Federal Reserve System, September 11, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23731 Filed 9–16–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposal to Engage in Nonbanking Activities or to Acquire Companies that are Engaged in Nonbanking Activities

Carolina First Corporation, Greenville, South Carolina (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to acquire up to 20.2 percent of the voting shares of Affinity Technology, Inc., Columbia, South Carolina (Company), and thereby engage in providing data processing software and hardware to insured depository institutions (financial institutions). The software consists of a proprietary Decision Support System (DSS) that would automate the data collection and collation and credit scoring involved in processing and acting on mortgage and other loan applications. The hardware consists of automated loan machines (ALMs) at which financial institution customers could apply for and receive proceeds of loans processed by DSS. Company also would provide the software to operate the ALMs. Company currently provides these services to financial institutions throughout the United States, and would continue to provide services on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks have generally provided the proposed services, that banks generally provide services that are operationally or functionally similar to the proposed services so as to equip them particularly well to provide the proposed services, or that banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984); *Securities Industry Ass'n v. Board of Governors*, 468 U.S. 207, 210-11, n.5 (1984). A bank holding company also may engage in any incidental activities that are necessary to carry on an activity that is closely related to banking. *See* 12 CFR 225.21(a)(2); *National Courier* at 1239-1241.

Applicant states that the Board previously has determined by regulation that providing certain data processing and data transmission services and facilities (including software) and providing access to such services and facilities by any technological means are closely related to banking for purposes of section 4(c)(8) of the BHC Act. In order to be found to be closely related to banking, the data to be handled must be ''financial, banking, or economic'' in nature, and such activities must be conducted within certain additional limitations established by the Board. *See* 12 CFR 225.25(b)(7). Applicant maintains that Company's proposed activities would relate to financial, banking, or economic data, and would otherwise conform to Regulation Y.

Applicant states that the ALM hardware to be provided under the proposal is special purpose hardware because it is designed to process only financial, banking, or economic data related to automated loan transactions, and therefore asserts that the provision of the hardware is closely related to banking. *See Citicorp*, 72 Fed. Res. Bull. 497, 499 (1986) (*Citicorp*). To the extent that it is determined that the hardware includes general purpose hardware, Applicant states that it will be offered only in conjunction with permissible data processing software and will not constitute more than 30 percent of the cost of any packaged offering in which it is contained, as required by Regulation Y. *See* 12 CFR 225.25(b)(7)(iii). Applicant also states that there is no other producer of ALM hardware, and contends that as a result the production of ALM hardware by Company is permissible as a necessary incident to Company's other activities. *See Citicorp* at 500; Board Ruling at II F.R.R.S. 4-472.1 (June 19, 1989).

In order to approve the proposal, the Board also must determine that the proposed activities to be engaged in by Company are a proper incident to banking that ''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(c)(8). Applicant contends that its proposal would produce public benefits by reducing cost and providing greater convenience in loan processing that outweigh any potential adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 27, 1996. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a

statement of reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, September 9, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-23482 Filed 9-16-96; 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 October 1, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. The Royal Bank of Scotland Group plc , Edinburgh, Scotland, The Royal Bank of Scotland plc, Edinburgh, Scotland, The Governor and Company of the Bank of Ireland, Dublin, Ireland, and Citizens Financial Group, Inc., Providence, Rhode Island; to engage *de novo* through their subsidiary, Citizens Capital, Inc., Boston, Massachusetts (tentative name), in commercial lending activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire First Family Financial Corporation, Eustis, Florida, and thereby indirectly acquire First Family Bank, FSB, Eustis, Florida, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be performed throughout the State of Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Brunsville Bancorporation, Inc., Brunsville, Iowa; to engage *de novo* in acting as an insurance agent and selling all types of insurance, pursuant to §§ 225.25(b)(8)iii and 225.25(b)(8)vi of the Board's Regulation Y.

2. Merrill Bancorporation, Inc., Merrill, Iowa; to engage *de novo* in acting as an insurance agenct and selling all types of insurance, pursuant to §§ 225.25(b)(8)iii and 225.25(b)(8)vi of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to engage *de novo* through their subsidiary, Norwest Financial Maine, Inc., Des Moines, Iowa, in making, acquiring, or servicing loans or other extensions of credit relating to consumer finance, sales finance, and commercial finance (including but not limited to accounts receivable financing, factoring, and other secured lending activities), pursuant to § 225.25(b)(1) of the Board's Regulation Y; in underwriting and sale of credit life insurance, pursuant to §§ 225.25(b)(8)(i) and (vii) of the Board's Regulation Y; in the sale, on an agency basis, of credit accident and health insurance, credit property and casualty, and involuntary unemployment insurance, pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y; in the issuance and sale at retail of money orders and travelers checks, pursuant to § 225.25(b)(12) of the Board's Regulation Y; in the servicing of loans and other extensions of credit for other persons, pursuant to § 225.25(b)(1) of the Board's Regulation Y; in offering and selling of bookkeeping, payroll, and other management reporting services and data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted throughout the State of Maine.

Board of Governors of the Federal Reserve System, September 11, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23730 Filed 9–16–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Trade Commission.

TIME AND DATE: 2:00 p.m., Friday, October 11, 1996.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to Public: (1) Oral Argument in International Association of Conference Interpreters, et al., Docket 9270.

Portions Closed to the Public: (2) Executive Session to follow Oral Argument in International Association of Conference Interpreters, et al., Docket 9270.

CONTACT PERSON FOR MORE INFORMATION: Victoria Streitfeld, Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 96–23943 Filed 9–13–96; 2:48 pm]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Board on Welfare Indicators Meeting

AGENCY: Advisory Board on Welfare Indicators.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the second meeting of the Advisory Board on Welfare Indicators. This notice also describes the functions of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: October 2, 1996, 9:30 a.m. to 4:00 p.m.

ADDRESSES: Humbert H. Humphrey Building, Room 503–A/529–A, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Ann McCormick, Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation—Human Services Policy, 200 Independence Ave., S.W., Washington, D.C. 20201. Telephone: (202) 690–5880; FAX: (202) 690–6562.

SUPPLEMENTARY INFORMATION: The Advisory Board on Welfare Indicators was established by Subtitle D, section 232 of the Social Security Act Amendments of 1994 (Public Law 103–432). The duties of the Advisory Board include (A) providing advice and recommendations to the Secretary of Health and Human Services on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt and (B) providing advice on the development and presentation of annual welfare indicators reports to the Congress required by the Social Security Act Amendments of 1994.

The meeting of the Advisory Board is open to the public. The agenda for the October 2 meeting includes discussion of the interim report to Congress on the: development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of receipt, and predictors of welfare receipt; and assessment of the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs. A final agenda will be available from the office of the Assistant Secretary for Planning and Evaluation—Human Services Policy on September 25, 1996.

Records will be kept of the Advisory Board proceedings, and will be available for public inspection at offices of the Assistant Secretary for Planning and Evaluation—Human Services Policy, 200 Independence Avenue, S.W., room 404–E, Washington, D.C. 20201 between the hours of 9:00 a.m.–5:00 p.m.

Ann Segal,

Acting Deputy Assistant Secretary for Human Services Policy, ASPE.

[FR Doc. 96–23760 Filed 9–16–96; 8:45 am]

BILLING CODE 4150–04–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Family Preservation and Family Support (FP/FS) Service Implementation Study—Community Level Data Collection.

OMB No.: New.

Description: The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) established title IV–B, subpart 2 of the Social Security Act (42 U.S.C. 62–628) to provide funds to states for the development of family preservation and family support programs and services. Subpart 2, Section 435 of OBRA 93 requires the Secretary of HHS to evaluate the effectiveness of programs carried out under the legislation. This data collection is being conducted to help meet this requirement and to information reauthorization of the legislation in 1999.

Data collection will ask local child welfare agencies and other community service providers and agencies involved in planning and implementation of title IV–B subpart 2 to provide information on the programs and services funded, populations targeted, reform efforts initiated, and the coordination of new or expanded programs with the child welfare system and other existing providers. Both qualitative and quantitative analyses will be completed to highlight the process states employ to implement the legislation, coordinate with other funding sources, develop new programs, and improve service delivery systems. The analysis of this information will be used to provide feedback to ACF necessary to determine the need for future policy guidance and refine the nature and scope of technical assistance. The information will also provide direct feedback to states and communities concerning successful implementation strategies.

Respondents: State, Local or Tribal Govt. and Not-for-profit institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Welfare	20	1	1.5	30
Family Preservation	20	1	1.0	20
Family Support	60	1	1.5	90
FP/FS Coordinator	20	1	1.5	30
Oversight Committee/Board Member	60	1	1.0	60

Estimated Total Annual Burden Hours: 230.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be

identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information: (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 11, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–23759 Filed 9–16–96; 8:45 am]

BILLING CODE 4184–01–M

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 61 FR 35219–28, July 5, 1996) is amended to reflect the transfer of responsibilities related to respirator certification research, and physiology from the Division of Safety Research to the Division of Respiratory Disease Studies within the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

Following the functional statement for the *Division of Respiratory Disease Studies (HCCA)*, insert the following:

Office of the Director (HCCA1). Directs and manages the operations of the Division of Respiratory Disease Studies.

Following the functional statement for the *Laboratory Investigations Branch (HCCA5)*, insert the following:

Certification and Quality Assurance Branch (HCCA6). (1) Ensures protection of workers in dangerous environments by certifying reliability, safety, and efficacy of respiratory protection devices; (2) evaluates, certifies, and maintains official records and respirators and hazard-measuring instruments as required by the Federal Mine Safety and Health Act of 1977 and the Occupational Safety and Health Act of 1970; (3) assists in the development of new performance criteria, standards, and guidelines for certification of respirators and hazard-measuring instruments; (4) evaluates quality control plans, conducts in-plant audits of the manufacturers' quality control programs, and monitors the quality and performance of certified equipment procured on the open market; (5) investigates field problems associated with NIOSH-certified equipment; (6) provides assistance to users on the selection, use, maintenance, and operation of certified equipment; (7)provides recommendations on research needs to the Protective Technology Branch and others in the occupational safety and health community.

Air-Purifying Respirator Section (HCCA62). (1) Evaluates, recommends certifications, and conducts post-certification audits on air-purifying respirators to ensure that they meet regulatory requirements; (2) evaluates, recommends certifications, and conducts post-certification audits on mine samplers; (3) reviews and assists in the development of new performance requirements, standards, and guidelines for air-purifying respirators and mine samplers; (4) reviews and field evaluates quality control plans for air-purifying respirators and mine samplers; (5) responds to inquiries and complaints about air-purifying respirators and mine samplers.

Air-Supplied Respirator Section (HCCA63). (1) Evaluates, recommends certifications, and conducts post-certification audits on air-supplied respirators to ensure that they meet regulatory requirements; (2) reviews and assists in the development of new performance requirements, standards, and guidelines for air-supplied respirators; (3) reviews and field evaluates the quality control plans for air-supplied respirators; (4) responds to inquiries and complaints about air-supplied respirators.

Delete the functional statement for the *Division of Safety Research (HCCB)* and insert the following:

Division of Safety Research (HCCB). (1) As the focal point for the Institute's occupational traumatic injury prevention and safety program, identifies the major causes of injuries and safety hazards, identifies interventions to improve worker safety, and supports implementation of these interventions; (2) develops scientifically sound recommendations for programs to prevent and control occupational traumatic injuries; (3) develops scientifically sound recommendations for the performance and use of personal protective equipment and various other devices for protecting workers; (4) evaluates the impact of targeted control programs for preventing or mitigating traumatic injury, diseases, disability, and death; (5) manages program planning/project coordination, including the Division's financial and personnel management systems, and ensures the scientific and program integrity of Division functions.

Delete in its entirety the title and functional statement for the *Certification and Quality Assurance Branch (HCCB6), Division of Safety Research (HCCB).*

Delete the functional statements for *Protective Technology Branch (HCCB7), Protective Equipment Section (HCCB74)* and the *Safety Controls Section (HCCB76, Division of Safety Research (HCCB),* and insert the following:

Protective Technology Branch (HCCB7). (1) Designs and develops new and improved safety engineering systems and controls, work practices, and personal protective equipment to protect workers; (2) tests and evaluates, in the laboratory, simulated workplace, and actual work-sites, existing and new technological approaches to worker protection, and occupational injury prevention and control; (3) evaluates the use and performance of safety engineering controls; (4) develops scientifically sound recommendations for the performance and sue of existing or redesigned safety engineering controls, work practices, and personal protective equipment; (5) develops technical information to support recommendations for safety standards; (6) coordinates the preparation of technical informational packages from the Protective Equipment and Safety Controls Sections; (7) provides recommendations to the Analysis and Field Evaluations Branch regarding specific hazards or interventions requiring further epidemiologic research and/or evaluation; (8) provides technical assistance and consultation to other branches within the Division of Safety Research, other components of NIOSH and CDC, other Federal agencies, and other public and private sector organizations on the use of protective technology for the prevention of worker exposures to safety hazards that lead to injuries.

Protective Equipment Section (HCCB74). (1) Conducts research in the laboratory, simulated workplace, and actual workplace to identify ways to

improve the performance of personal protective equipment other than respirators; (2) develops and validates test methods necessary to evaluate interventions and to increase the performance of personal protective equipment; (3) develops recommendations for relevant constituent groups on the use of effective personal protective equipment other than respirators; (4) assists in preparing technical informational packages to facilitate the proper use of all types of personal protective equipment.

Safety Controls Section (HCCB76). (1) Conducts research in the laboratory, simulated workplace, and actual workplace to identify effective approaches and/or interventions to increase the performance levels and proper use of engineering controls for protecting workers from all types of trauma; (2) analyzes potentially hazardous operations using systems safety and/or other engineering techniques to identify safety engineering control and safe work practice strategies; (3) develops and validates test and measurement methods necessary to evaluate interventions, performance standards, and regulations that involve the performance of controls and practices for protecting workers from acute, subacute, chronic, or cumulative trauma; (4) evaluates safety engineering controls and work practices to ensure that they meet established criteria; (5) develops recommendations for the use of effective safety engineering controls and work practices by relevant constituent groups; (6) assists in preparing technical informational packages to facilitate the proper use of safety engineering controls and work practices.

Delete in its entirety the title and functional statement for *Respiratory Protection Section (HCCB75), Protective Technology Branch (HCCB7), Division of Safety Research (HCCB).*

Dated: August 30, 1996.

David Satcher,

Director.

[FR Doc. 96–23708 Filed 9–16–96; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3999–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Announcement of Funding Awards Indian HOME Program for Indian Applicants Fiscal Year 1996

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1996 for the Indian HOME Program for Indian applicants. The purpose of this notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian applicants under the HOME Program.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755–0032 (this is not a toll-free number). Hearing- or speech impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Indian HOME Program funding for Fiscal Year 1996 is authorized by the HOME Investment Partnerships Act (the HOME Act) signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act was amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 102–233, approved April 11, 1994).

This Notice announces FY 1996 funding of $14,000,000 to be used to assist in the funding to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. The FY 1996 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the Federal Register on March 27, 1996 (61 FR 13574).

The Indian HOME Program for Indian Applicants is listed in the Catalog of Federal Domestic Assistance as number 14.239.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: September 9, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

APPENDIX A

FY 96 Indian HOME Program—Grantee's name and address	Grant amount awarded
Quinault Indian Nation, POB 189, Taholah, WA 98587	$818,750
Bois Forte Reservation, Gary W. Donald, Tribal Chairman, POB 16, Nett Lake, MN 55772	260,000
Mille Lacs Band of Ojibwe, Marge Anderson, Chief Executive, HCR 67, Box 194, Onamia, MN 56359	741,000
Minominee Tribe of Wisconsin, John Teller, Tribal Chairman, POB 910, Keshena, WI 54135	85,250
Artic Village Council, POB 50, Arctic Village, AK 99722	295,000
Cook Inlet Tribal Council, Inc., 670 Fireweed Lane, Ste 200, Anchorage, AK 99503	868,750
Winnebago Tribe of the Winnebago Reservation of Nebraska, POB 687, Winnebago, NE 68017	561,000
Devils Lake Sioux Tribe, Fort Totten, ND 58335	800,000
Cheyenne River Sioux Tribe, POB 590, Eagle Butte, SD 57625	264,760
Oglala Sioux Tribe, POB H, Pine Ridge, SD 57770	344,000
Salish-Kootenai Tribes, POB 278, Pablo, MT 59855	150,000
Three Affiliated Tribes, Fort Berthold Reservation, POB HC 3 Box 2, New Town, ND 58763	88,990
Mescalero Indian Reservation, Wendell Chino, President, POB 176, Mescalero, NM 88340	707,250
Pascua Yaqui Indian Tribe, Arcadio Gastelum, Chairperson, 7474 S. Camino de Oeste, Tucson, AZ 85746	1,500,000
White Mountain Apache Tribe, Ronnie Lupe, Chairperson, POB 700, Whiteriver, AZ 85941	810,000
Hoopa Valley Indian Reservation, Dale Risling, Chairman, POB 1348, Hoopa, CA 95546	319,769
Augustine Indian Reservation, Maryann Martin, Chairman, 1185 N. Hargrave St., Banning, CA 92220–2633	57,736

APPENDIX A—Continued

FY 96 Indian HOME Program—Grantee's name and address	Grant amount awarded
Jicarilla-Apache Indian Reservation, Leonard Atole, President, POB 507, Dulce, NM 87528	1,000,000
Tohono O'odham Nation, Edward Manuel, Chairman, POB 837, Sells, AZ 85634	691,495
Pala Band of Mission Indians, Robert Smith, Chairman, POB 43, Pala, CA 92059	347,000
San Carlos Apache Tribe, Raymond Stanley, Chairman, POB "O," San Carlos, AZ 85550	663,000
Cherokee Nation, POB 948, Tahlequah, OK 74465	419,623
Creek Nation, POB 580, Okmulgee, OK 74447	1,035,000
Choctaw Nation, PO Drawer 1210, Durant, OK 74702	1,171,627

[FR Doc. 96–23693 Filed 9–16–96; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Request for Nominations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of request for nominations.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is soliciting nominations for the Public Advisory Group, which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of injury assessment and restoration activities using funds obtained for purposes of restoration as part of the civil settlement pursuant to the T/V Exxon Valdez oil spill of 1989. Public Advisory Group members will be selected to serve a two-year term beginning in October 1996.

DATES: All nominations should be received on or before October 14, 1996.

ADDRESSES: Nominations should be sent to the Exxon Valdez Oil Spill Trustee Council, 645 G Street, Anchorage, Alaska 99501 (fax: 907/276–7178).

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011; or Cherri Womac, Exxon Valdez Oil Spill Trustee Council, 645 G Street, Anchorage, Alaska, (907) 278–8012 or (800) 478–7745. A copy of the charter for the Public Advisory Group is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities, or other use of natural resource damages recovered by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Group will be made by the Secretary of the Interior with unanimous approval of the other Trustees.

The Public Advisory Group has openings for 17 members, representing the public at large (5 members) and the following special interests: aquaculture, commercial fishing, commercial tourism, forest products, environmental, conservation, local government, Native landowners, recreation users, sport hunting and fishing, subsistence users, and scientists and academics. Two additional ex officio non-voting members are from the Alaska State House of Representatives and the Alaska State Senate.

Parties who wish to make nominations must submit the following information to the Trustee Council:

1. A biographical sketch of the nominee (education, experience, address, telephone, fax);

2. Information about the nominee's knowledge of the region, peoples, or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill, or expertise in public lands and resource management;

3. Information about the nominee's relationship/involvement (if any) with the principal interest to be represented;

4. A statement explaining any unique contributions the nominee will make to the Public Advisory Group and why the nominee should be appointed to serve as a member;

5. Any additional relevant information that would assist the Trustee Council in making a recommendation; and

6. Answers to the conflict of interest questions listed below. Public Advisory Group members and their alternates are chosen to represent a broad range of interests. It is possible that action could be taken by the Public Advisory Group when one or more of the members have a direct personal conflict of interest which would prejudice and call into question the entire public process. To avoid this and to enable the Trustee Council to choose appropriate individuals as members and/or alternates to members, it is necessary that each nomination packet provide the following information. If the answer to any of these questions is "yes," please provide a brief explanation. A "yes" will not necessarily preclude any nominee from being appointed to serve on the Public Advisory Group.

a. Do you, your spouse, children, any relative with whom you live, or your employer have, or are you defending, a claim filed before any court or administrative tribunal based upon damages caused by the T/V Exxon Valdez oil spill?

b. Do you, your spouse, children, any relative with whom you live, or your employer own any property or interest in property which has been, or is likely to be, proposed for acquisition by the Trustee Council?

c. Have you, your spouse, children, any relative with whom you live or your employer submitted, or are you likely to submit, a proposal for funding by the Trustee Council; are you or are you likely to be a direct beneficiary of such a proposal?

d. Do you know of any other potential actions of the Trustee Council or the Public Advisory Group that would have a direct bearing on the financial condition of yourself, your spouse,

children, other relative with whom you live, or your employer?

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–23782 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–RG–P

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Extension of Listing Priority Guidance for Fiscal Year 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that it is extending its listing priority guidance until an appropriations law is approved for the Department of the Interior for fiscal year 1997 (FY 97). The Service also proposes to amend and continue implementation of guidance for assigning relative priorities to listing actions conducted under section 4 of the Endangered Species Act (Act) during FY 97 and seeks public comment on this proposed guidance. The extension is necessary because the Service expects appropriated funds to fall short of those needed to eliminate the existing backlog of proposed listings and complete all listing actions required by the Act in FY 97. Under the proposed guidance, the Service would assign all listing actions to one of four tiers, as distinguished from the three tiers in the current guidance (61 FR 24722).

DATES: The extension of the existing listing priority guidance is effective October 1, 1996 and will remain in effect until the Service can determine the effects of any FY 97 appropriations law and then issue final guidance. Comments on the proposed FY 97 guidance will be accepted until October 17, 1996.

ADDRESSES: Comments on the proposed guidance should be addressed to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mailstop ARLSQ–452, Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Service adopted guidelines on September 21, 1983 (48 FR 43098–43105) that govern the assignment of priorities to species under consideration for listing as endangered or threatened under section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service adopted those guidelines to establish a rational system for allocating available appropriations to the highest priority species when adding species to the lists of endangered or threatened wildlife and plants or reclassifying threatened species to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates).

The enactment of Pub. L. 104–6 in April, 1995 rescinded $1.5 million from the Service's budget for carrying out listing activities through the remainder of fiscal year 1995. Public Law 104–6 also contained a prohibition on the expenditure of the remaining appropriated funds for final determinations to list species or designate critical habitat which, in effect, placed a moratorium on those activities.

From October 1, 1995 through April 26, 1996, funding for the Service's endangered species programs, including listing of endangered and threatened species, was provided through a series of continuing resolutions, each of which maintained in force the moratorium against issuing final listings or critical habitat designations. The continuing resolutions also severely reduced or eliminated the funding available for the Service's listing program. Consequently, the Service reassigned listing program personnel to other duties. The net effect of the moratorium and reductions in funding was that the Service's listing program was essentially shut down.

The moratorium on final listings and the budget constraints remained in effect until April 26, 1996, when President Clinton approved the Omnibus Budget Reconciliation Act of 1996 and exercised the authority that Act gave him to waive the moratorium. At that time, the Service had accrued a backlog of proposed listings for 243 species. Moreover, although the moratorium imposed by Pub. L. 104–6 did not specifically extend to petition processing or the development of new proposed listings, the extremely limited funding available to the Service for listing activities generally precluded these actions from October 1, 1995 through April 26, 1996. The Service continued to receive new petitions and accrued a backlog of petitions that request the listing or delisting of 57 species under section 4(b)(3) of the Act. The Service has historically attempted to strike a balance among the various listing activities required by the Act, but as appropriations have not kept pace with the Service's workload, an increased backlog of listing actions has developed.

In anticipation of receiving a listing appropriation for the remainder of FY 96, the Service issued and requested comment on interim listing priority guidance on March 11, 1996 (61 FR 9651). On May 16, 1996, the Service addressed all public comments received on the interim guidance and published final listing priority guidance for fiscal year 1996 activities (61 FR 24722). It is this guidance that is now extended until the Service can prepare final guidance based on the terms of a FY 97 appropriations law.

When the moratorium was lifted and funds were appropriated for the administration of a listing program, the Service faced the considerable task of allocating the available resources to the significant backlog of listing activities. Over the past four months, the Service has focussed its resources on processing existing proposals and has issued final rules listing five species.[1] The relatively low number of final rules issued during this period resulted primarily from the time needed to restart the listing program from a total shutdown and the need to consider factual developments related to proposed listing packages (e.g., changes in known distribution, status, or threats) that took place during the year-long moratorium.

Although progress has been made with regard to proposed rules, the Service also needs to make expeditious progress on determining the conservation status of the 183[2] species designated by the Service as candidates for listing in the most recent Candidate Notice of Review (61 FR 7596; February 28, 1996; see 16 U.S.C. § 1533(b)(3)(B)(iii)(II)). The Service is also subject to extensive litigation that could require it to process a variety of actions under section 4 of the Act.

Furthermore, it now appears that Congress will probably appropriate only about two-thirds of the amount the President's FY 97 budget requested for the listing program. The President's budget for FY 97 requested $7.483 million for the listing program, but appropriations bills passed by the

[1] Final rules listing the red-legged frog, wahane (Hawaiian plant), and 3 plants from the Island of Nihoa, Hawaii.

[2] Effective August 26, 1996, the U.S. population of the short-tailed albatross (*Diomedea albetrus*) was designated a candidate species.

House of Representatives and reported out by the Senate Appropriations Committee each propose to appropriate only $5 million for the program. The Senate bill also proposes to ''earmark'' $500,000 to be devoted specifically to withdrawal notices, delistings, or reclassifications of endangered species to threatened species.

The above discussed backlogs and the pending funding shortfall underscore the need for program-wide priorities to guide the allocation of limited resources. Moreover, existing and threatened litigation may overwhelm the limited resources the Service anticipates receiving in FY 97 unless priorities are set in advance.

For example, the plaintiffs in *Fund for Animals* v. *Babbitt,* Civ. No. 92–800 (SS) (D.D.C.), recently filed a motion to enforce the December 15, 1992 Settlement Agreement in that case. They request the District Court to order the Service to publish listing proposals for 41 of the candidate species covered by the Agreement (referred to hereafter as ''settlement species'') by December 30, 1996, and to publish listing proposals for the remaining 44 settlement species by March 30, 1997.

Resolution of the conservation status of these 85 settlement species would require, for each species, publication of either a proposed listing rule or a notice stating reasons why listing is not warranted. The Agreement does not require final decisions on listings. Therefore, full compliance with the Agreement will not bring the full protection of the Act to any species, but rather would only somewhat advance the process toward listing.

Up to the time the funding for the listing program became severely constrained, the Service was on track to achieve full compliance with this Agreement. The Service had published, during the period covered by the Agreement, proposed listing rules for 359 candidate species.

Despite this progress, the Service is now left with the following dilemma. If it were to continue to spend scarce appropriated funds to move candidate species forward to the proposed listing stage in order to comply with the Settlement Agreement, it would deplete the entire $4.5 million listing appropriation that is anticipated for FY 97. Processing of proposed listing rules requires the investment of considerable time and resources. It involves substantial research, status review, coordination with State and local governments and other interested parties, and conducting public hearings and peer review. Furthermore, since most of the 98 candidate species that are *not* subject to the terms of the Agreement have high listing priority number assignments (64 non-settlement, candidate species have priority numbers of 1, 2 or 3), the Service would, in order to be consistent with the 1983 listing priority guidance, have to process all 183 candidate species (85 settlement, 98 non-settlement) if ordered to comply fully with the terms of the Settlement Agreement during FY 97.

The Service's entire anticipated FY 97 listing budget is insufficient to comply with the *Fund for Animals* Settlement Agreement. If it attempted to comply, it would devote no resources to making final listing decisions on the 237 species, the vast majority of which face high-magnitude threats, that have already been proposed for listing. Though so close to receiving the full protection of the Act, these species would move no closer to that goal while all the Service's efforts would be bent toward deciding whether to move candidate species closer to proposed listing, where they receive some limited procedural protection (the Section 7 conference requirement, see 16 U.S.C. § 1536(a)(4)), but not the full substantive and procedural protection afforded by final listing.

This course of action would also result in a still larger backlog of up to 420 proposed species. Meanwhile, the administrative records on many of the 237 species pending final decision could require, due to the additional one-year delay in the decision-making process, further public notice and comment proceedings in fiscal year 1998 because the scientific data they contain may no longer be current.

In short, enforcement of the *Fund for Animals* Settlement Agreement in FY 97 would delay for at least one year the issuance of final listing rules and, in fiscal year 1998, would make the process of issuing final listing rules for the aging backlog of proposed species more time and labor intensive. Such action would entirely frustrate the objective of waiving the final listing moratorium in April of 1996. Therefore, in accordance with the Interior Department's recommendation, the Department of Justice has filed a motion with the District Court that seeks appropriate relief from the terms of the Agreement, consistent with the listing priorities articulated in this Notice.

In order to focus conservation benefits on those species in greatest need of the Act's protections, the Service believes that processing the outstanding proposed listings should receive higher priority than other actions authorized by section 4 such as new proposed listings, petition findings, and critical habitat determinations.

Section 4(b)(1) of the Act requires the Service to use the ''best available scientific and commercial information'' to determine those species in need of the Act's protections. It has been long-standing Service policy that the order in which species should be processed for listing is based primarily on the immediacy and magnitude of the threats they face. Given the large backlogs of proposed species, candidate species awaiting proposal, and petitions, it is extremely important for the Service to focus its efforts on actions that will provide the greatest conservation benefits to imperiled species in the most expeditious manner.

The Service will continue to base decisions regarding the order in which species will be proposed or listed on the 1983 listing priority guidelines. These decisions will be implemented by the Regional Office designated with lead responsibility for the particular species.

The Service allocates its listing appropriation among its seven Regional Offices based primarily on the number of proposed and candidate species for which the Region has lead responsibility. The objective is to ensure that those areas of the country with the largest percentage of known imperiled biota will receive a correspondingly high level of listing resources. The Service's experience in administering the Act for the past two decades has shown that it needs to maintain at least a minimal listing program in each Region, in order to respond to emergencies and to retain a level of expertise that permits the overall program to function effectively over the longer term. In the past, when faced with seriously uneven workloads, the Service has experimented with reassigning workload from a heavily burdened Region to less-burdened Regions. This approach has proven to be very inefficient because the expertise developed by a biologist who works on a listing package will be useful for recovery planning and other activities and that expertise should be concentrated in the area which the species inhabits. In addition, biologists in a Region are familiar with other species in that Region that interact with the species proposed for listing, and that knowledge may be useful in processing a final decision. For these reasons, the Service does not believe it is wise to reassign workload from one Region to another.

By maintaining a listing program in each Region, and with resource allocation based on workload, Regions with few outstanding proposed listings

will be able to process Tier 3 actions (such as new proposed listings or petition findings), while Regions with many outstanding proposed listings will use most or all of their allocated funds on Tier 2 actions. For example, following the lifting of the moratorium in April 1996, the Service allocated $2,336,000 to Region 1 (Pacific/Western Region), which continues to face a substantial backlog of Tier 2 actions, while Region 3 (Great Lakes/Midwest Region) received only $27,000. The Service cannot make Regional allocation of funds for FY 97 until it receives a final appropriation; however, it expects that a similar funding disparity will result based on workload. Workload variations will also mean that Region 3, which only has two proposed species, could begin work on some Tier 3 actions under the revised guidance proposed in this notice while Region 1, which has 196 proposed species, will be primarily only processing final decisions on proposed listings in FY 97. The Service anticipates that Nationwide, only a small amount of funding will be used on activities below Tier 2, because Regions that do not face a sizeable backlog of Tier 2 actions will not receive significant amounts of funding.

In light of the continued budgetary uncertainty facing the Service at this time, through this notice the Service is extending the listing priority guidance currently in effect until the Service can prepare final guidance based on the terms of a FY 97 appropriations law. To address the biological, budgetary, and administrative issues noted above in the longer term, the Service proposes to adopt the following revised listing priority guidance. As with the guidance issued May 16, 1996, this guidance would supplement, but not replace, the 1983 listing priority guidelines, which are silent on the matter of prioritizing among different types of listing activities.

Proposed Listing Priority Guidance for Fiscal Year 1997

As noted above, the bill reported out of the Senate Appropriations Committee for FY 97 would ''earmark'' $500,000 of the listing budget to be devoted specifically to withdrawal notices, delistings, or reclassifications of endangered species to threatened species. If such an ''earmark'' emerges from the congressional process, those actions would be processed as the ''earmarked'' amount of funding permits and would not be subject to this proposed guidance.

Since it is unclear at this date whether any amount will be ''earmarked'' in the FY 97 appropriations law for any delistings or reclassifications of endangered species to threatened species, the Service has not proposed to include them within this priority system. If the FY 97 appropriations law does not contain an earmark for those activities, the Service's final guidance would prioritize such activities as appropriate. The Service invites public comment on how it ought to prioritize such activities if no earmark emerges from the appropriations process.

If $4,500,000 would remain in the listing budget for all other listing activities, it will fall far short of the resources needed to eliminate the backlog of proposed species and complete all listing actions required by the Act in FY 97, and some form of prioritization will still be necessary. Therefore, the Service proposes to implement the following guidance in FY 97, on the assumption that the listing program budget will be appropriated no more than $5,000,000.

The following sections describe a multi-tiered approach that assigns relative priorities, on a descending basis, to listing actions to be carried out under section 4 of the Act. The 1983 listing priority guidelines would be used as applicable to set priority among actions within tiers. The Service emphasizes that this guidance would be effective until September 30, 1997 (unless extended or canceled by future notice) and the agency fully anticipates returning to concurrently processing petition findings, proposed and final listings, and critical habitat determinations after the backlog of proposed listings has been further reduced.

Completion of emergency listings for species facing a significant risk to their well-being would remain the Service's highest priority (Tier 1) under the revised system. Processing final decisions on pending proposed listings would, as now, be assigned to Tier 2. Third priority would be to resolve the conservation status of species identified as candidates and processing 90-day or 12-month administrative findings on petitions to list, delist, reclassify, or revise critical habitat. Preparation of proposed or final critical habitat designations would be assigned lowest priority (Tier 4).

Tier 1—Emergency Listing Actions

The Service would immediately process emergency listings for any species of fish, wildlife, or plant that faces a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act. This would include preparing a proposed rule to list the species. The Service would conduct a preliminary review of every petition that it receives to list a species or change a threatened species to endangered status in order to determine whether an emergency situation exists. If the initial screening indicates an emergency situation, the action would be elevated to Tier 1. If the initial screening does not indicate that emergency listing is necessary, processing of the petition would be assigned to Tier 3 below.

Tier 2—Processing Final Decisions on Proposed Listings

In issuing the proposed listings that remain outstanding, the Service found that the vast majority of the proposed species faced high-magnitude threats. The Service believes that focusing efforts on making final decisions relative to these proposed species would best comport with the overall purpose of the Act by providing maximum conservation benefits to those species that are in greatest need of the Act's protections. As proposed listings are reviewed and processed, they will be completed through publication of either a final listing or a notice withdrawing the proposed listing. While completion of a withdrawal notice may appear inconsistent with the thrust of the guidance, once a determination not to make a final listing has been made, publishing the notice withdrawing the proposed listing takes minimal time and appropriations, and it is important and more cost effective and efficient to bring closure to the proposed listing, as compared to postponing action and taking it up at some later time.

Setting Priorities Within Tier 2

Most of the outstanding proposed listings deal with species that face high-magnitude threats, such that additional guidance is needed to clarify the relative priorities within Tier 2. Proposed rules dealing with taxa believed to face imminent, high-magnitude threats (listing priority assignments of 1 through 3) would have the highest priority within Tier 2.

Proposed listings that cover multiple species facing high-magnitude threats would have priority over single-species proposed rules unless the Service has reason to believe that the single-species proposal should be processed to avoid possible extinction.

Due to unresolved questions or to the length of time since proposal, the Service may determine that additional public comment or hearings are necessary before issuing a final decision for Tier 2 actions. Proposed listings for species facing high-magnitude threats that can be quickly completed (based on

factors such as few public comments to address or final decisions that are nearly complete) would have higher priority than proposed rules for species with equivalent listing priorities that still require extensive work to complete.

Given species with equivalent listing priorities and the factors previously discussed being equal, proposed listings with the oldest dates of issue would be processed first.

Tier 3—Resolving the Conservation Status of Candidate Species and Processing Administrative Findings on Petitions

As of this date, the Service has determined that 183 species warrant issuance of proposed listings. The Act directs the Service to make ''expeditious progress'' in adding new species to the lists. Issuance of new proposed listings is the first formal step in the regulatory process for listing a species. It provides some procedural protection in that all Federal agencies must ''confer'' with the Service on any actions that are likely to jeopardize the continued existence of proposed species.

Administrative findings for listing petitions that are not assigned to Tier 1 after initial screening would also be processed as a Tier 3 priority. As the Regional offices complete their pending Tier 1 and 2 actions, they will be expected to begin processing Tier 3 actions. Within the discretionary funds available, each Region should begin processing Tier 3 actions once all Tier 2 determinations are underway and near completion and then Tier 4 actions once Tier 3 actions are underway. Setting priorities within Tier 3 is discussed below.

Setting Priorities Within Tier 3

The 1983 listing priority guidelines and the basic principle that species in greatest need of protection should be processed first would be the primary bases for establishing priorities within Tier 3. Highest priority within Tier 3 would be processing of new proposed listings for species facing imminent, high-magnitude threats. If the initial screening of a petition suggests that the species probably faces imminent, high magnitude threats, processing that action will be accorded high priority.

Tier 4— Processing Critical Habitat Determinations

Designation of critical habitat consumes large amounts of the Service's listing appropriation and generally provides only limited conservation benefits beyond those achieved when a species is listed as endangered or threatened. Because the protection that flows from critical habitat designation applies only to Federal actions, situations where designating critical habitat provides additional protection beyond the consultation provisions of section 7, which also apply to Federal actions, are rare. It is essential during this period of limited listing funds to maximize the conservation benefit of listing appropriations. The Service believes that the small amount of additional protection that is gained by designating critical habitat for species already on the lists is greatly outweighed by the benefits of applying those same dollars to putting more species on the lists, where they would gain the protections included in sections 7 and 9. The Service has decided, in other words, to place higher priority on addressing species that presently have no or very limited protection under the Act, rather than devoting limited resources to the expensive process of designating critical habitat for species already protected by the Act.

Addressing Matters in Litigation

Using the proposed guidance and the 1983 listing priority guidelines, the Service will assess the status and the relative priority of all section 4 petition and rulemaking activities that are the subject of active litigation. The Service, through the Department of the Interior's Office of the Solicitor, will then notify the Justice Department of its priority determinations and request that appropriate relief be sought from each district court to allow those species with the highest biological priority to be addressed first. As noted in the guidance issued May 16, 1996, when the Service undertakes one listing activity, it inevitably foregoes another, and in some cases courts have ordered the Service to complete activities that are simply not, in the Service's expert judgment, among the highest biological priorities. However, to the extent that these efforts to uphold the Service's listing priority guidance and the 1983 listing priority guidelines do not receive deference in the courts, the Service will need to comply with court orders despite any conservation disruption that may result. The fact that the Service acknowledges its duty to comply with court orders should not, however, be interpreted to mean that any court order is consistent with this guidance without regard to how disruptive it may be to the Service's effort to make the most biologically sound use of its resources.

The Service will not elevate the priority of proposed listings for species under active litigation. To do so would let litigants, rather than expert biological judgments, set listing priorities. The Regional Office with responsibility for processing such packages will be responsible for determining the relative priority of such cases based upon this proposed guidance and the 1983 listing priority guidelines, and for furnishing supporting documentation that can be submitted to the relevant court to indicate where such species rank in the overall priority scheme.

Public Comments Solicited

The Service intends that any action resulting from this proposed guidance be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, environmental groups, industry, commercial trade entities, or any other interested party concerning any aspect of this proposed guidance are hereby solicited. The Service will take into consideration any comments and additional information received (especially the final FY 97 appropriations law) and will announce further guidance after the close of the public comment period and as promptly as possible after a FY 97 appropriations bill for the Department of the Interior is approved and becomes law.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: September 9, 1996.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–23719 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–55–P

Environmental Assessment; Texas

ACTION: Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of One Single Family Residence on 8.0 acres on Bullick Bluff (Tax parcel #01–5947–011600007), Austin, Travis County, Texas.

SUMMARY: Jane Marie Hurst (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT–818874. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica*

chrysoparia). The proposed take would occur as a result of the construction of one single family residence on 8.0 acres on Bullick Bluff (Tax parcel #01–5947–011600007), Austin, Travis County, Texas.

This action will eliminate less than one-half acre and indirectly impact less than one-half additional acre of golden-cheeked warbler habitat. The applicant proposes to compensate for this loss of golden-cheeked warbler habitat by placing $1,500 into the City of Austin Balcones Canyonlands Conservation Fund to acquire/manage lands for the conservation of the golden-cheeked warbler.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. Alternatives to this action were rejected because selling or not developing the subject property with federally listed species present is not economically feasible. A determination of whether jeopardy to the species will occur or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received by October 17, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston or Mary Orms, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the above Austin address. Written data or comments concerning the application(s) and EA/HCPs should be submitted to the Field Supervisor, at the Austin Ecological Services Field Office at the above address. Please refer to permit number PRT–818874 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Mary Orms at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–23752 Filed 9–16–96; 8:45 am]

BILLING CODE 4510–55–M

Bureau of Land Management

[NM–070–1430–01; NMNM96317]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of R&PP patent of public land in San Juan County, New Mexico.

SUMMARY: The following described public land is determined suitable for classification for patenting to San Juan County, New Mexico under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.). San Juan County proposes to use the land for a solid waste transfer station.

New Mexico Principal Meridian

T. 25 N., R. 9 W.,
Sec. 19, lot 4.

A portion of lot 4 containing 5 acres, more or less.

COMMENT DATES: On or before November 4, 1996 interested parties may submit comments regarding the purposed conveyance or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 LaPlata Highway, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 LaPlata Highway, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period of two (2) years from date of this publication in the Federal Register. The segregative affect will terminate upon issuance of the patent to San Juan County, or two (2) years from the date of this publication, whichever occurs first.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.
2. Reservation to the United States of all minerals.
3. All valid existing rights, e.g. rights-of-way and leases of record.
4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Patenting is consistent with current Bureau of Land Management policies and land use planning. The proposal serves the public interest since it would provide readily accessible facilities to the surrounding public for deposition of solid waste.

Dated: September 12, 1996.

Ilyse K. Auringer,

Acting Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 96–23862 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Grand Hotel in Gulfport, Mississippi on October 23–24, 1996.

The agenda will cover the following principal subjects:

—5-Year Program Review

—Report from the Subcommittee on Environmental Information for Select OCS Areas Under Moratoria
—Advances in Well Control Technology and Training
—DOE Research Projects Relating to the OCS
—Congressional Updates
—Hard Minerals Update
—Offshore Platform Abandonment
—MMS Activities in the International Arena

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 11, 1996, to the Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 20170, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Wednesday, October 23 and Thursday, October 24, 1996.

ADDRESS: The Grant Hotel, 3215 W. Beach Boulevard, Gulfport, Mississippi 39501—(800)–946–7777.

FOR FURTHER INFORMATION CONTACT: Terry Holman at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 9, 1996.

Lucy R. Querques,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 96–23723 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Draft General Management Plan/Draft Environmental Impact Statement and Public Meeting; Saint Croix Island International Historic Site

AGENCY: National Park Service, Interior.

ACTIONS: (1) Availability of draft general management plan (DGMP)/draft environmental impact statement (DEIS) for Saint Croix Island International Historic Site located in Calais, Washington County, Maine, U.S.A., and (2) a public meeting in Calais, Maine, for public review and discussion of the DGMP/DEIS.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft general management plan/draft environmental impact statement for Saint Croix Island International Historic Site, the only international historic site (IHS) in the National Park Service.

In 1604, Pierre Dugua Sieur de Mons and 78 other men, including Samuel Champlain, established a colony on St. Croix Island in the St. Croix River, now the boundary between Maine, U.S.A., and New Brunswick, Canada. Isolation and a harsh winter severely tested the colonists. Almost half died of scurvy before mild weather brought Native peoples to the island with fresh game, and a supply vessel arrived from France. Sieur de Mons moved his colony to a more favorable setting at Port Royal in what is now the Annapolis Basin, Nova Scotia.

St. Croix Island was authorized as a national monument in 1949, dedicated in 1968, and redesignated an international historic site in 1984. A memorandum of understanding between Canada and the United States recognizes the international significance of the site and commits both nations to joint planning and commemoration.

The document describes four management alternatives, each of which would preserve and protect significant site resources. Site interpretive media would be in both English and French. All alternatives would encourage visitors to view the site with respect. Alternative 1—No Action, would entail no new facilities development. Alternative 2—Walk in the Footsteps, would provide an outdoor interpretive experience emphasizing the natural setting. Alternative 3—NPS Contact Station, the preferred alternative, would provide increased visitor services and interpretive programs by developing a modest visitor contact station on the mainland. Alternative 4—Regional Resource Center, would promote development of a cooperative, community-supported regional resource center located in downtown Calais, Maine.

DATES: Comments on the DGMP/DEIS should be received no later than November 25, 1996. A public meeting on the DGMP/DEIS will be held in Calais, Maine, on October 24, 1996.

MEETING: NPS staff will present the DGMP/DEIS at a meeting to be held in the assembly room of Washington County Technical College on River Road (U.S. Route 1), Calais, Maine, at 7:00 p.m. October 24, 1996. The public is invited to comment on the preferred and other alternatives and their potential impacts. The meeting will be announced in local news media in October 1996. Citizens of both nations are invited to attend.

SUPPLEMENTARY INFORMATION: Public reading copies of the DGMP/DEIS will be available for review at the Department of Interior Natural Resources Library, 1849 C Street, N.W., Washington, DC 20240, and at the following public libraries: Calais Free Library; Peavey Memorial Library, Eastport; Porter Memorial Library, Machias; Bangor Public Library; and Jesup Memorial Library, Bar Harbor, Maine, U.S.A.; and in the St. Croix Library, St. Stephen; and Ross Memorial Library, St. Andrews, New Brunswick, Canada.

Comments on the DGMP/DEIS should be submitted to the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609–0177.

For Further Information contact the superintendent at the above address, or call (207) 288–5472. Direct faxes to (207) 288–5507; E-mail to acadplanning@nps.gov.

Dated: September 4, 1996.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 96–23814 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–10–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 September 7, 1996. Pursuant to § 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, D.C. 20013–7127. Written comments should be submitted by October 2, 1996.

Carol D. Shull,

Keeper of the National Register.

Arizona

Maricopa County

Bartlett, Samuel L., House, 325 W. Northern Ave., Phoenix, 96001057

Mohave County

Northern Avenue Petroglyph Site, Address Restricted, Kingman vicinity, 96001054

Pinal County

Fulbright, Thomas, House, 75 S. Matilda St., Florence, 96001055

La Casa del High Jinks, High Jinks Rd., 8 mi. SE of Oracle and 2.5 mi. W of Mt. Lemmon Rd., Oracle, 96001056

California

Mendocino County

Mare Island Historic District (Boundary Increase), Roughly bounded by Mare Island Straight, Causeway St., Cedar Ave., Mesa Rd., Ribeiro Rd., and Tyler Rd., Vallejo vicinity, 96001058

Florida

Indian River County

Fell, Marian, Library (Fellsmere MPS), 63 N. Cypress St., Fellsmere, 96001059

Iowa

Crawford County

Klondike Hotel, 332 3rd St., Manilla, 96001060

Dallas County

Perry Carnegie Library Building (Public Library Buildings in Iowa TR), 1123 Willis Ave., Perry, 96001061

Louisiana

Ouachita Parish

Monroe Residential Historic District, Roughly bounded by McKinley St., 7th St., Hudson Lne., and Riverside Dr., Monroe, 96001062

Massachusetts

Suffolk County

Frederick Douglass Square Historic District, Roughly bounded by Hammond St., Cobat St., Windsor St., and Westminister St., Lower Roxbury, Boston, 96001063

Missouri

Johnson County

Magnolia Mills, 200 W. Pine St., Warrensburg, 96001064

Lafayette County

Odessa Ice Cream Company Building, 101 W. Dryden St., Odessa, 96001065

North Dakota

Burke County

Portal State Bank, 19 Main St., Portal, 96001067

McHenry County

Sevareid, Alfred and Clara, House, 405 2nd St., W, Velva, 96001066

Oregon

Clackamas County

Rogers, George, House, 59 Wilbur St., Lake Oswego, 96001068

Multnomah County

Corbett, Elliott R., House, 1600 S.W. Greenwood Rd., Portland vicinity, 96001070

Laurelhurst Manor Apartments, 3100 S.E. Ankeny St., Portland, 96001069

Spokane, Portland and Seattle Railroad Warehouse, 1631 N.W. Thurman St., Portland, 96001071

Tunturi, Fred, House, 5115 N.E. Garfield, Portland, 96001072

Virgin Islands

St. Croix Island

Fort Frederick, S of jct. of Mahogany Rd. and Rt. 631, N end of Frederiksted, Frederiksted, 96001073

Virginia

Albemarle County

Longwood, N side of VA 665, jct. with VA 663 and VA 664, Earlysville vicinity, 96001074

Williamsburg Independent City

Chandler Court and Pollard Park Historic District, Roughly bounded by Jamestown Rd., Griffin Ave., Pollard Park, and College of William and Mary Maintenance Yard, Williamsburg, 96001075

[FR Doc. 96–23813 Filed 9–16–96; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Indonesia (''Borrower'') as part of USAID's development assistance program. The proceeds of this loan will be used to facilitate the delivery of urban environmental infrastructure for the benefit of low-income families in Indonesia. At this time, the Government of Indonesia has authorized USAID to request proposals from eligible lenders for loans under this program of $25 Million U.S. Dollars (US$25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Indonesia

Project No: 497–HG–002—Amount: US$25,000,000.

Housing Guaranty Loan Nos.: 497–HG–008 B01, 497–HG–009 A01.

1. *Attention:* Mr. Darsjah, Director General of Budget, Ministry of Finance, Jalan Lapangan, Banten Timur No. 2, Jakarta, Indonesia.

Telex No.: 45799 DJMLNIA or

Telefax No.: 011–(62–21)–365859 or 374530 (preferred communication).

Telephone Nos.: 011–(62–21)–3458289, 372758 or 3842234 or 3848294.

2. Attention: Mr. Paul Sutopo, Bank of Indonesia, Jalan M.H. Tharmin No. 2, Jakarta, Indonesia.

Telex No.: 44200 BISIR IA or 46611 BISIR IA.

Telefax No.: 011–(62–21)–3452892 (preferred communication).

Telephone No.: 011–(62–21)–367972.

3. *Attention:* Mr. Ibrahim Zarkasi, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, N.Y. 10281.

Telefax No.: 212/945–1316 (preferred communication).

Telephone Nos.: 212/945–1310 or 1311.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representatives by *Tuesday, October 1, 1996, 12:00 noon Eastern Daylight Savings Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. William Gelman, Director, Regional Housing and Urban Development Office, USAID/Jakarta, Box 4, APO AP 96520, c/o American Embassy, Jakarta, Indonesia, (Street address: J1 Medan Merdeka Selatan No. 5, Jakarta, Indonesia).

Telex No.: 44218 AMEMB IA.

Telefax No.: 011–(62–21)–380–6694 and 385–8560 (preferred communication).

Telephone No.: 011–(62–21)–344–2211.

Address: Mr. Peter Pirnie, Financial Advisor, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, DC 20523–1822.

Telex No.: 892703 AID WSA.

Telefax Nos.: 703/875–4384 or 875–4639 (preferred communciation).

Telephone Nos.: 703–875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual of interest only). If variable interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If fixed interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6.0% U.S. Treasury Bond due February 15, 2026.

Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from:

Ms. Viviann Gary, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822, Fax Nos: 703/875–4384 or 875–4639, Telephone: 703 875–4300.

Dated: September 12, 1996.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 96–23864 Filed 9–16–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–368]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35). The Commission has requested OMB approval of this submission by COB September 13, 1996.

EFFECTIVE DATE: September 6, 1996.

PURPOSE OF INFORMATION COLLECTION: This information collection is for use by the Commission in connection with investigation No. 332–368, Crawfish: Competitive Conditions in the U.S. Market, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Ways and Means, U.S. House of Representatives. The Commission expects to deliver the results of its investigation to the Committee by February 28, 1997.

SUMMARY:

Title: Questionnaires for Investigation No. 332–368, Crawfish: Competitive Conditions in the U.S. Market.

Summary: Staff of the USITC plans to gather primary data from crawfish producers, processors, and purchasers. The questionnaires are designed to collect information on U.S. production, sales, imports, purchases, prices employment, profit and loss, and substitutability. Information collected will be used to assess the competitive conditions in the U.S. market for crawfish.

Need and Use of Information: The information collected will contribute to an assessment of the competitive conditions in the U.S. market for crawfish as requested by the Committee on Ways and Means, U.S. House of Representatives.

Description of Respondents: Producers, processors, and distributors of crawfish.

Number of Respondents: 350.

Frequency of Responses: Reporting—One Time.

Total Burden Hours: 5,218.

ADDITIONAL INFORMATION OR COMMENT: Copies of agency submissions to OMB in connection with this request may be obtained from David Ludwick, Project Leader for the Crawfish investigation, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3329). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–7340). Copies of any comments should also be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

By order of the Commission.

Issued: September 10, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23689 Filed 9–16–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–369]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On August 23, 1996, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 for the purpose of providing advice

concerning possible modifications to the Generalized System of Preferences (GSP).

Following receipt of the request and in accordance therewith, the Commission instituted Investigation No. 332–369 in order to provide as follows—

(1) In accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974 (1974 Act), with respect to each article listed in Part A of the attached annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the GSP;

(2) In accordance with section 503(c)(2)(E) of the 1974 Act, which exempts from one of the competitive need limits in section 503(c)(2)(A) of the 1974 Act articles for which no like or directly competitive articles was being produced in the United States on January 1, 1995, advice as to whether products like or directly competitive with the articles in Part A of the attached annex were being produced in the United States on January 1, 1995;

(3) With respect to the article listed in Part B of the attached annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of the article in Part B of the attached annex from eligibility for duty-free treatment under the GSP;

(4) With respect to the articles listed in Part C of the attached annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of the country specified with respect to the articles in Part C from eligibility for duty-free treatment under the GSP for such article;

(5) In accordance with section 503(d)(1)(A) of the 1974 Act, advice as to whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503© (2)(A) of the 1974 Act for the country specified with respect to the articles in Part D of the attached annex, and with respect to Cote d'Ivoire in case 95–1 (HTS subheading 0802.90.9090 (pt)).

In providing its advice under (1), the Commission will assume, as requested by USTR, that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503© (2)(A) of the 1974 Act (except for Cote d'Ivoire in case 95–1 (HTS subheading 0802.90.9090 pt.). With respect to the competitive need limit in section 503(c)(2)(A)(I)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $122,141,016.

As requested by USTR, the Commission will seek to provide its advice not later than December 2, 1996.

EFFECTIVE DATE: September 9, 1996.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural and forest products, Lowell Grant (202–205–3312).

(2) Energy, chemicals, and textiles, Robert Randall (202–205–3366).

(3) Minerals, metals, machinery, and miscellaneous manufactures, Charles Yost (202–205–3432).

(4) Services, electronics, and transportation, John Davitt (202–205–3407).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The USTR letter noted that the Trade Policy Staff Committee (TPSC) announced on July 28, 1995 in the Federal Register the acceptance of product petitions for modification of the Generalized System of Preferences (GSP) received as part of the 1995 annual review. The letter stated that modifications to the GSP which may result from this review will be announced in the spring of 1997, and become effective in the summer of 1997.

The 1995 annual review was not conducted because the authority for the GSP program terminated on July 31, 1995. Legislation amending the GSP provisions and extending the program was signed by the President on August 20, 1996 (Public Law 104–188, 110 Stat. 1755) (Small Business Job Protection Act of 1996—for the GSP related provisions, *see* subtitle J of title I of the Act). The amendments apply to articles entered on or after October 1, 1996.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on October 9, 1996, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, D.C. The hearing may, if necessary, continue on October 10 and 11. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on September 20, 1996. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on September 25, 1996. Posthearing briefs should be filed with the Secretary by close of business on October 18, 1996.

In the event that no requests to appear at the hearing are received by the close of business on September 20, 1996, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after September 30, 1996 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 18, 1996. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: September 10, 1996.

Donna R. Koehnke,

Secretary.

Annex I (HTS Subheadings) [1]

A. Petition to add products to the list of eligible articles for the Generalized System of Preference (GSP).

0802.90.9090(pt)
2901.29.50
2921.51.50(pt)
2934.20.80(pt)
5701.10.40(pt)
6901.00.00
8527.29.80
8607.19.03

B. Petitions to remove a product from the list of eligible articles for the GSP.

9609.10.00

C. Petitions to remove duty-free status from beneficiary countries for products on the list of eligible articles for the GSP.[2]

[1] See USTR Federal Register notice of July 28, 1995, (60 F.R. 38856) for article description.

[2] While the Trade Policy Staff Committee (TPSC) review will focus on the designated country(ies),

2001.90.39(pt) (Chile)
2005.90.5510 (Chile)
2820.10.00 (South Africa)
7006.00.40 (Indonesia)

D. Petitions for waiver of competitive need limit for products on the list of eligible products for the specified country.

0802.90.9090 (Cote d'Ivoire)
1604.16.10 (Morocco)
1604.16.30 (Morocco)
2905.11.20 (Venezuela)
2909.19.1010 (Venezuela)
2917.37.00 (Romania)
2933.39.25 (Brazil)
2933.40.30 (Brazil)
4104.39.20 (Thailand)
4107.90.60 (South Africa)
4203.21.20 (Indonesia)
6905.10.00 (Venezuela)
7614.90.20 (Venezuela)
8414.30.40 (Brazil)
8469.12.00 (Indonesia)
8471.49.26 (Thailand)
8471.60.35 (Thailand)
8517.19.40 (Thailand)
8517.19.80 (Thailand)
8517.21.00 (Thailand)
8521.10.60 (Thailand)
8527.21.10 (Brazil)
8527.31.40 (Indonesia)
8527.90.90 (Philippines)
8544.30.00 (Thailand)
9009.12.00 (Thailand)
9032.89.60 (Philippines)

[FR Doc. 96–23679 Filed 9–16–96; 8:45 am]

BILLING CODE 7020–02–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 25, 1996 at 11:00 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. No. 731–TA–556 (Remand) (DRAMs of One Megabit and Above from the Republic of Korea)—briefing and vote.
5. Outstanding action jackets: none.

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: September 13, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23908 Filed 9–13–96; 12:02 pm]

BILLING CODE 7020–02–U

the TSPC reserves the right to address removal of GSP status for countries other than those specified as well as GSP status for the entire article.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. USA Waste Services, Inc. and Sanifill, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16 (b) through (h), that proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia in *United States* v. *USA Waste Services, Inc. and Sanifill, Inc.*, Civil Action No. 1:96CV02031.

On August 30, 1996, the United States filed a Complaint alleging that the proposed acquisition by USA Waste Services, Inc. of the stock of Sanifill, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires the companies, among other things, to divest a dry waste landfill and certain commercial and residential hauling assets in Houston, Texas; make available certain municipal solid waste landfill capacity rights in the Houston area and the Johnstown, Pennsylvania area; and amend specified waste hauler contract terms in the Johnstown area in a way which fosters competition.

Public comment is invited within the statutory 60-day comment period. Such comments and response thereto will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

In the United States District Court for the District of Columbia

United States of America, State of Texas, by and through its Attorney General, Dan Morales and Commonwealth of Pennsylvania, by and through its Attorney General, Thomas W. Corbett, Jr. Plaintiffs, v. *USA Waste Services, Inc., and Sanifill, Inc.* Defendants.

[Civil Action No.: 1:96–CZ02031]

Filed: August 30, 1996.

Judge Gladys Kessler

Stipulation on Jurisdiction and Agreed Final Judgment

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. In the event plaintiffs withdraw their consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall have no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 30, 1996.

Respectfully submitted,

For Plaintiff United States of America:

Anne K. Bingaman,

Assistant Attorney General.

Lawrence R. Fullerton,

Deputy Assistant Attorney General.

Constance K. Robinson,
Director of Operations.
J. Robert Kramer II,
PA Bar # 23963.
Willie L. Hudgins,
DC Bar # 37127.
David R. Bickel,
DC Bar # 393409.
Joel A. Christie,
WI Bar # 1019438.
Michael K. Hammaker,
DC Bar # 233684.
Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, (202) 307–1168.

For Plaintiff State of Texas:
Dan Morales,
Attorney General of Texas.
Jorge Vega,
First Assistant Attorney General.
Laquita A. Hamilton,
Deputy Attorney General for Litigation.
Thomas P. Perkins, Jr.,
Chief, Consumer Protection Division.
Mark Tobey,
Assistant Attorney General, Deputy Chief for Antitrust.
Amy R. Krasner,
Assistant Attorney General, TX Bar No. 00791050.
Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548, (512) 463–2185.

For Plaintiff Commonwealth of Pennsylvania:
Thomas W. Corbett, Jr.,
Attorney General of Pennsylvania.
Carl S. Hisiro,
Chief Deputy Attorney General.
James A. Donahue, III,
Senior Deputy Attorney General.
Carron M. Trainer,
Deputy Attorney General.
Garrett S. Gallia,
Deputy Attorney General.
Office of the Attorney General of Pennsylvania, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120, (717) 787–4530.

For Defendant USA Waste Services, Inc.:
Gregory T. Sangalis,
Vice-President, General Counsel, and Secretary.

For Defendant Sanifill, Inc.:
Kirk K. Van Tine,
DC Bar # 257139, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW, Washington, DC 20004.
Attorneys for Sanifill, Inc.

So ordered on this ____, day of 1996.

_____
United States District Court Judge

Certification of Service

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., Sanifill, Inc., the Office of the Attorney General of the State of Texas, and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of the United States' Explanation of Consent Decree Procedures in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 30th day of August, 1996.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Suite 500, 1735 New York Ave., NW., Washington, DC 20006.
Sanifill, Inc.: c/o Kirk K. Van Tine, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW., Washington, DC 20004.
State of Pennsylvania: James A. Donahue, III, Senior Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120.
State of Texas: Mark Tobey, Assistant Attorney General, Deputy Chief for Antitrust, Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548.

David R. Bickel,
Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20503, (202) 307–1168.

Final Judgment

Whereas, plaintiffs, United States of America (''United States''), the State of Texas (''Texas''), and the Commonwealth of Pennsylvania (''Pennsylvania''), having filed their Complaint herein on August 30, 1996, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture of certain assets, the provision of certain disposal airspace rights, and the prompt modification of contract terms to assure that competition is not substantially lessened is the essence of this agreement;

And whereas, the parties intend to require defendants to divest, as viable business operations, the Divestiture Assets specified herein;

And whereas, defendants have represented to plaintiffs that the divestiture and contract changes required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

Definitions

As used in this Final Judgment:

A. ''Solid waste hauling'' means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers. Solid waste hauling includes hand pick-up, containerized pick-up and roll-off service.

B. ''USA Waste'' means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Dallas, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. ''Sanifill'' means Sanifill, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. ''Houston Area'' means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

E. ''Johnstown Area'' means Cambria County, Pennsylvania; Blair County, Pennsylvania; Indiana County, Pennsylvania; Somerset County, Pennsylvania; and northeast Westmoreland County, Pennsylvania.

F. ''Houston Hauling Assets'' means the frontload commercial business of Sanifill that provides solid waste hauling services in the Houston Area, and, at the option of the purchaser, the rearload residential business of Sanifill presently served by Sanifill's Channelview garage located at 999 Ashland in Channelview, Texas. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, and, with respect to the rearload residential business, assignable contracts, all trucks, containers, equipment, material, and supplies associated with these assets.

G. ''Sunray Assets'' means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of USA Waste with an office at 2015 Wyoming in League City, Texas. These include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including all equipment, material, and supplies associated with these assets. These assets are not required to include the assets of any hauling business in operation at the Sunray site.

H. ''Airspace Rights'' means the right of independent private haulers to dispose municipal solid waste at the Pellegrene Landfill in the Johnstown Area over a ten-year period beginning on the date of the divestiture as described more fully in Section IX.

I. ''Airspace Assets'' means the right to dispose, over a ten-year period beginning on the date of the divestiture, of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazelwood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM in Angleton, Texas.

J. ''Divestiture Assets'' refers to the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

K. ''Small Container'' means a 1 to 10 cubic yard container.

L. ''Small Containerized Solid Waste Hauling Service'' means providing solid waste hauling service to commercial customers by providing the customer with a Small Container that is picked up mechanically using a frontload, rearload, or sideload truck, and expressly excludes hand pick-up service, and service using a compactor attached to or part of a small container.

M. ''Customer'' means a Small Containerized Solid Waste Hauling Service customer.

III

Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assignees, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Defendants are hereby ordered and directed, within 90 days from the filing of this Final Judgment, to divest the Divestiture Assets, unless the United States, after consultation with Texas, consents that only some portion of the Divestiture Assets need be divested. Defendants are further ordered and directed to notify plaintiffs in writing immediately when they have completed the divestitures.

B. Unless the United States, after consultation with Texas, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Houston Hauling Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste hauling, and that the Sunray Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste disposal in the Houston Area. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Texas, that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling, dry waste disposal, or both, and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and/or disposal.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets and Airspace Rights described in this Final Judgment. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. Defendants shall make available such information to plaintiffs at the same time such information is made available to any other person. In giving notice of the availability of the Houston Hauling Assets, defendants shall not exclude any persons bound by any non-compete obligations to Sanifill.

D. Defendants shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Divestiture Assets be offered or guaranteed continued employment after the divestiture.

E. Defendants shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Final Judgment.

F. As part of the sale of the Airspace Assets, defendants will include an agreement to accept waste from the purchaser or anyone designated by the purchaser to dispose of waste at the landfills. As agents of the purchaser, defendants will operate the gate, scale house, and disposal area under terms and conditions no less favorable than those provided by defendants' vehicles or the vehicles of any municipality in the Houston Area, except as to price and credit terms.

V

Appointment of Trustee

A. In the event that Defendants have not divested all of their assets required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Texas, appoint a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate.

Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorney, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Divestiture Assets, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture order under this Final Judgment. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purposes of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Texas.

E. Defendants shall give 30 days' notice to the United States, Texas, and Pennsylvania prior to acquiring any interest that is not otherwise reportable under the Hart-Scott Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the solid waste hauling industry in the Houston Area or the Johnstown Area where that person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year. However, nothing herein shall preclude defendants from acquiring less than five (5) percent of the stock of a publicly traded company.

F. Defendants shall give 30 days' notice to the United States, Texas, and Pennsylvania prior to acquiring any interest that is not otherwise reportable under the Hart-Scott Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the municipal solid waste or dry waste disposal industry in the Houston Area or the Johnstown Area, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous six months, exceed the revenue limits of paragraph E above. However, nothing herein shall preclude defendants from acquiring less than five (5) percent of the stock of a publicly traded company.

G. The purchaser or purchasers of the Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Texas, sell any of those assets to, or combine any of those assets with, those of defendants during the life of this decree. Furthermore, the purchaser or purchasers of the Divestiture Assets, or any of them, shall notify plaintiffs 45 days in advance of any proposed sale of all or substantially all of the assets, or change in control over those assets, acquired pursuant to this Final Judgment.

VI

Notification

A. Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiffs may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing defendants and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Texas, or by defendants under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when defendants consummate the acquisition, but in no event later than October 30, 1996, and every thirty (30) days thereafter until the divestiture has been completed, defendants shall deliver to plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Defendants shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII

Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consultation with Texas and Pennsylvania.

VIII

Prohibited Conduct

With respect to the Johnstown Area, defendants are enjoined and restrained as follows:

A. Except as set forth in paragraph VIII.B. and G., defendants shall not enter into any contract with a Customer for a service location that:

(1) Has an initial term longer than one (1) year;

(2) Has any renewal term longer than one (1) year;

(3) Requires that the Customer give defendants notice of termination more than thirty (30) days prior to the end of any initial term or renewal term;

(4) Requires that the Customer pay liquidated damages in excess of three times the greater of its prior monthly charge or its average monthly charge over the most recent six months during the first year of the initial term of the Customer's contract;

(5) Requires that the Customer pay liquidated damages in excess of two times the greater of its prior monthly charge or its average monthly charge over the most recent six months after the Customer has been a Customer of a defendant for a continuous period in excess of one (1) year;

(6) Requires the Customer to give defendants notice of any offer by or to another solid waste hauling firm or requires the Customer to give defendants a reasonable opportunity to respond to such an offer for any period not covered by the contract (sometimes referred to as a ''right to compete'' clause);

(7) Is not easily readable (*e.g.*, formatting and typeface) or is not labeled, in large letters, SERVICE CONTRACT; or

(8) Requires a Customer to give defendants the right or opportunity to provide hauling service for recyclables or more than one solid waste hauling service for a Customer unless the Customer affirmatively chooses to have defendant do so by so stating on the front of the contract.

B. Notwithstanding the provisions of paragraph VIII.A. of this Final Judgment, defendants may enter into a contract with a Customer for a service location with an initial term in excess of one year provided that:

(1) The Customer has acknowledged in writing that the defendants have offered to the Customer the form contracts defendants are required under VIII.A. and D. to offer generally to Customers by notice in the form attached hereto as Exhibit B;

(2) The Customer has the right to terminate the contract after one year by giving notice to defendants thirty (30) days or more prior to the end of that one year period;

(3) The contract otherwise complies with the provisions of paragraph VIII.A. (2)–(8); and

(4) The number of service locations subject to contracts permitted under subparagraph B. does not exceed 25% of the total number of service locations for small containerized solid waste hauling service in any year.

C. From the date of the filing of an executed Stipulation, defendants shall offer to new Customers with service locations only contracts that conform to the requirements of paragraphs VIII.A. or B. of this Final Judgment, except as provided in VIII.G.

D. Except as provided in VIII.G., within thirty (30) days following the entry of this Final Judgment, defendants shall send to all existing Customers with service locations with contracts having an initial term longer than one year and which otherwise do not conform with paragraph VIII.B. a notice in the form attached hereto as Exhibit A. If the customer elects to accept the offered contract language, defendants shall execute such an agreement.

E. Except as provided in VIII.G., for each Customer with a contract having an initial term longer than one year and that otherwise does not conform to paragraphs VIII.B. that enters a renewal term 120 days after entry of this Final Judgment, defendants shall send a reminder to that Customer, in the form attached hereto as Exhibit B, ninety (90) days or more prior to the effective date of the renewal term. This remainder may be sent to the Customer as part of a monthly bill, but if it is, it must be displayed on a separate page and in large print.

F. Upon entry of this Final Judgment, defendants may not enforce those contract provisions that are inconsistent with this Final Judgment.

G. Notwithstanding the provisions of this Final Judgment, defendants may enter into contracts with municipal or governmental entities that are not in compliance with paragraphs VIII.A.–F. provided that those contracts are awarded to defendants on the basis of a formal request for bids or a formal request for proposals issued by the Customer.

H. Notwithstanding the provisions of this Final Judgment, defendants shall not be required to do business with any Customer.

I. Defendants may not oppose any efforts by any persons to amend any county plans to add any landfill, to permit a new landfill, or to permit expansion of an existing landfill.

IX

Airspace Rights

A. Defendants shall provide the Airspace Rights at the Pellegrene Landfill, located at SR 2019 Lucisboro Road in Homer City, Pennsylvania as follows:

(1) Defendants are obligated to accept up to 200 tons per day and up to 62,400 tons per year during the ten-year period;

(2) Subject to applicable county plans, these Airspace Rights will be available to any independent private hauler for waste collected in the Pennsylvania counties of Cambria, Blair, Westmoreland, and Somerset until the tonnage limits in IX.A(1) are met; and

(3) Defendants will provide these Airspace rights under terms and conditions no less favorable than those provided to defendants' vehicles or the vehicles of any municipality in the Johnstown area, except as to price and credit terms.

B. For purposes of measuring the tonnage of airspace rights provided under Section IX,

(1) Construction and demolition or other Type 4 materials and waste delivered in transfer trailers are not included in the tonnage limits set forth in IX.A.(1);

(2) ''Independent private hauler'' refers to any private firm, not including municipalities, providing solid waste collection services, but no disposal services, in the Johnstown Area.

X

Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that the Houston Hauling Assets will be maintained and operated in the ordinary course of business and consistent with past practices, and shall (1) maintain all insurance policies and all permits that are required for the operation of the assets, and (2) maintain books of account and records in the usual, regular, and ordinary manner and consistent with past practices.

B. Defendants shall take all steps necessary to ensure that the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the provision of dry waste disposal services in the Houston Area, with management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of Sanifill's solid waste hauling and disposal businesses.

C. Defendants shall use all reasonable efforts to maintain and increase sales of solid waste hauling and disposal services provided by the Divestiture Assets, and they shall maintain at 1995 or previously approved levels, whichever is higher, promotional, advertising, sales, marketing and merchandising support for such services.

D. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement and maintenance schedules for the Divestiture Assets.

E. Defendants shall not, except as part of a divestiture approved by plaintiffs, remove, sell or transfer any Divestiture Assets, other than solid waste hauling and disposal services provided in the ordinary course of business.

F. Defendants shall take no action that would jeopardize the sale of Divestiture Assets.

G. Defendants shall appoint a person with oversight responsibility for the Divestiture Assets to insure compliance with this section of the Final Judgment.

XI

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States, Texas, or Pennsylvania, including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas or the Attorney General of the Commonwealth of Pennsylvania, respectively, and on reasonable notice to defendants made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview defendants' directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas or the Attorney General of the Commonwealth of Pennsylvania, respectively, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section XI shall be divulged by any representative of the United States or the Office of the Attorney General of Texas or of the Office of the Attorney General of Pennsylvania to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas or of the Office of the Attorney General of Pennsylvania, except in the course of legal proceedings to which the United States, Texas or Pennsylvania is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiffs shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which any defendant is not a party.

XII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII

Termination

This Final Judgment will expire on the tenth anniversary of the date of its entry.

XIV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

Notice to Customers

Dear Valued Customer:

[Insert name of local operating company] is offering a new one year contract to all small containerized solid waste hauling customers with service locations in [insert market here]. We would like to take this opportunity to offer this contract to you. Of course, if you prefer, you can continue with your existing contract.

In most cases, this new contract will have terms that are more advantageous to customers than their current contracts. This new contract has the following features:

- An initial term of one year (unless you request a longer term);
- A renewal term of one year;
- At the end of your initial term, you may take no action and your contract will renew *or* you can choose not to renew the contract by simply giving us notice at any time up to 30 days prior to the end of your term;
- If you can request a contract with a term longer than one year, you can cancel that contract after one year by giving us notice at any time up to 30 days prior to the end of the first year;
- If you terminate the contract at any other time, you will be required to pay, as liquidated damages, no more than three times the greater of your prior monthly or average monthly charge. If you've been a customer continuously for more than one year, the liquidated damages would be reduced to two times the greater of your prior monthly or average monthly charge;
- You will not be required to give us notice of any offer from another waste hauling firm or to give us an opportunity to make a counteroffer although you may do so if you wish;
- You will be able to choose on the contract which specific types of waste hauling services you would like us to perform.

You may obtain a new contract containing these terms by calling [insert telephone number or sales rep name and number].

Exhibit A

If you prefer, you may continue with your existing contract. If you retain your existing contract, we will not enforce any terms that are inconsistent with the new form contract terms.

We thank you for your business and look forward to a continued relationship with you. If you have any questions, please call [insert contact person and phone number].

Reminder to Customers

Your contract will automatically renew on [MM/DD/YY] unless we receive your cancellation by [MM/DD/YY].

You may also obtain a new form contract with some terms more advantageous to you than your current contract.

You may obtain a new contract containing these terms by calling [insert telephone number or sales rep name and number].

Exhibit B

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

I

Nature and Purpose of the Proceeding

On August 30, 1996, the United States filed a civil antitrust Complaint which alleges that the proposed acquisition of the voting stock of Sanifill, Inc. (''Sanifill'') by USA Waste Services, Inc. (''USA Waste'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the combination of these two significant competitors would lessen competition substantially in the provisions of small containerized waste hauling services and landfill disposal services in the Houston, Texas and Johnstown Pennsylvania areas. As defined in the Complaint, the Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas, Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas and Galveston County, Texas; including the municipalities located, in whole or in part, in those counties (''Houston market''). The Johnstown area encompasses Indiana County, Pennsylvania; Somerset County, Pennsylvania; Cambria County, Pennsylvania; northeastern Westmorland County, Pennsylvania; and Blair County, Pennsylvania, including the municipalities located, in whole or in part, in those counties (''Johnstown market''). The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing USA Waste from acquiring control of Sanifill.

When the Complaint was filed, the United States also filed a proposed settlement that would permit USA Waste to complete its acquisition of Sanifill, but require certain divestitures and contract modifications that will preserve competition in the Houston and Johnstown markets. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders USA Waste to divest the Sanifill garage located at 999 Ashland, Channelview, Texas 77530; Sanifill's frontload commercial hauling business that provides solid waste hauling services in the Houston market, most of the rearload residential business of Sanifill presently served by Sanifill's Channelview facility (''Houston Hauling Assets''), and USA Waste's North County Landfill located at 2015 Wyoming, League City, Texas (''Houston Landifill Site'').

In addition, USA Waste is ordered to sell the right to use landfill capacity for up to 2,000,000 tons of municipal solid waste (''MSW'') over a ten year period beginning on the date of divestiture (and capped at an annual total of 270,000 tons) at one or both of the following sites in the Houston market: the Hazelwood Landfill located at 4719 Tri-City Beach Road, Baytown, Texas 77520 and the Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. (''Houston Airspace Assets''). USA Waste must complete the divestiture of the Houston Assets, the Houston Landfill Site, and the Houston Airspace Assets within ninety (90) days after the date on which the proposed Final Judgment was filed (i.e., August 30, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment requires USA Waste to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the Houston Hauling Assets and the Houston Landfill Site will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

Further, the proposed Final Judgment orders USA Waste to take certain actions to eliminate any anticompetitive impact from the proposed acquisition on the Johnstown market. USA Waste is ordered to offer less restrictive service contracts to their small container solid waste hauling customers in the Johnstown market. It must provide at least 30 days written notice to the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office in advance of its purchase of any significant waste hauling or waste disposal company in the Johnstown market. It shall not oppose the addition of any landfill, existing or new, to any county landfill plan in the Johnstown market. And further, USA Waste shall make available a total of 200 tons per day of MSW landfill capacity over a ten year period beginning on the date of divestiture at the following site in the Johnstown market: the Pellegrene Landfill located at SR 2019 Lucisboro Road, Homer City, Pennsylvania 15748. The Pelligrene Landfill capacity shall be made available by the defendants for use by any and all independent private MSW haulers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Description of the Events Giving Rise to the Alleged Violation

USA Waste is the third largest solid waste hauling and disposal company in the nation, and several municipal, commercial, industrial and residential customers in 24 states. In 1995, USA Waste had total revenues of over $730 million.

Sanifill is one of the top ten companies in the solid waste hauling and disposal business in the United States with operations in 23 states, the District of Columbia, Puerto Rico, Mexico and Canada. In 1995, Sanifill had total revenues of about $257 million.

On June 22, 1996, USA Waste agreed to acquire all of the voting stock of Sanifill for a purchase price of $1.5 billion. This transaction, which would take place in the highly concentrated Houston and Johnstown small container hauling and landfill disposal industries, precipitated the government's suit.

The Transaction's Effects in the Houston and Johnstown Markets

A. The Solid Waste Hauling Industry

The Complaint alleges that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area and the Johnstown area constitute appropriate sections of the country, or relevant geographic markets. The Complaint alleges the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services in the Houston and Johnstown markets and landfill disposal services in the Houston market.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called ''small containers.'' Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate noncompactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-of service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations may further localize markets. For example, flow control regulations in Pennsylvania can designate the facilities where trash picked up within a geographic area must be disposed. Other local regulations may prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. By designating certain disposal facilities, these laws and regulations can dictate which disposal facilities can compete for waste from these local jurisdictions and how a hauler can set up its routes.

The Complaint alleges that USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of small containerized hauling service in the Houston and Johnstown markets. Actual and potential competition between USA Waste and Johnstown for the provision of small containerized hauling service in the Houston and Johnstown markets will be eliminated.

USA Waste and Sanifill are two of the largest providers of small containerized hauling service in the Houston and Johnstown markets. In the Houston market, USA Waste has a 24 percent share and Sanifill has a 7 percent share. The acquisition would increase the Herfindahl-Hirschmann Index (HHI) by about 325 to about 2225.

In the Johnstown market, USA Waste has a 31 percent share and Sanifill has a 14 percent share. The acquisition would increase the HHI by about 850 to about 2550.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged markets, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

A new entrant cannot constrain the prices of larger incumbents until it

achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable MSW landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30–50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital costs, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what are referred to as a MSW (Type 1) landfill or to a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

USA Waste's acquisition of Sanifill would substantially lessen competition for the provision of MSW landfill and dry waste landfill service in the Houston market. Actual and potential competition between USA Waste and Sanifill for the provision of MSW and dry waste landfill service in the Houston market will be eliminated.

USA Waste and Sanifill are two leading providers of MSW landfill and dry waste landfill services in the Houston market. There are nine MSW landfills (owned by four firms) and approximately 18 dry waste landfills (owned by seven firms) in the Houston area. USA Waste and Sanifill each operate one MSW landfill; Sanifill has 11 dry waste landfills (four operating) and USA Waste has one dry waste landfill.

As a result of the acquisition, the concentration of MSW and dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. The acquisition would increase the HHI in MSW landfill disposal service by 225 points to 3550; and in dry waste landfills by 650 points to 4000. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW landfill or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA Waste and Sanifill in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small containerized hauling service in the Houston and Johnstown markets and landfill disposal service in the Houston market are likely to increase above competitive levels.

III

Explanation of the Proposed Final Judgment

A. The Houston Market

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires USA Waste and Sanifill, within 90 days of August 30, 1996, to divest, as viable ongoing businesses, the Houston Hauling Assets, Houston Landfill Site and the Houston Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill disposal assets, and such other assets as may be necessary to insure the viability of the small container and landfill businesses. If USA Waste and Sanifill cannot accomplish these divestitures within the above-described period, the Final Judgment provides that, upon application (after consultation with the State of Texas) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the State of Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. The defendants must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste and Sanifill will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston area market for MSW disposal services by requiring USA Waste and Sanifill to sell the rights to disposal of 2 million tons of MSW waste over ten years at their only two MSW landfills in the area. The Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste and Sanifill will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The 270,000 ton limit is approximately 80%

of the total capacity used in 1995 at the Sanifill MSW landfill. Sanifill will retain some of the hauling operations that used this landfill in 1995 and needs some capacity to compete for large disposal contracts against its two larger landfill competitors in the area. The availability of this significant capacity limits the impact of any increase in MSW landfill concentration in the Houston market. The availability of this landfill capacity further helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Final Judgment mandates that USA Waste also divest its sole dry waste (Type 4) landfill in the Houston area market. USA Waste's divestiture of the North County Landfill eliminates any possible anticompetitive effect related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Final Judgment that defendants provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market insures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

B. The Johnstown Market

The proposed Final Judgment also requires USA Waste and Sanifill to offer less restrictive contracts to small containerized hauling customers in the Johnstown area market. These changes to the contracts involve substantially shortening the term of contracts USA Waste and Sanifill use from three years to one year, substantially reducing the amount of liquidated damages, and eliminating other terms that could make entry more difficult. The proposed Final Judgment generally requires that these revised contracts shall be offered immediately to all new small containerized hauling customers. Within 30 days of the entry of the proposed Final Judgment, USA Waste and Sanifill must offer the revised contract to all their non-municipal small containerized hauling service customers in the Johnstown market. These changes in the contract will make it easier for a new entrant to gain customers and set up an efficient route or for a small hauler to expand its route if prices increase. In the Johnstown area, a rural market in which most haulers offer rearload small containerized hauling services and there are a number of small containerized haulers, contract relief should substantially eliminate any anticompetitive effects in the small containerized hauling market.

The proposed Final Judgment further limits any anticompetitive effect in the small containerized hauling market related to the USA Waste acquisition of Sanifill in the Johnstown market in several ways. *First*, the defendants are required to make available specified MSW landfill airspace rights to independent haulers for a ten year period. Defendants are obliged to accept up to 200 tons per day and up to 62,400 tons per year during this period at the Pelligrene landfill under non-price terms no less favorable than those provided to defendants' vehicles or the vehicles of any municipality in the Johnstown market. *Second*. USA Waste and Sanifill are required to refrain from opposing in any way the addition of new or existing landfills to any county landfill plan in the Johnstown market from entry of the Final Judgment and refrain from opposing any permit application for a new landfill or expansion of an existing landfill for a period of ten years. *Finally*, the requirement that defendants provide at least 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Johnstown area market insures that the U.S. Department of Justice and the Commonwealth of Pennsylvania Attorney General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

The United States concluded divestiture was not necessary in the Johnstown market. It determined that a change in the type of contracts used with small containerized hauling service in this market, combined with the additional notice and landfill capacity agreements reached with the parties, will adequately address the competitive concerns posed by USA Waste's acquisition of Sanifill. A number of factors led to that decision, including the number of existing competitors in the market; the size of the population; the number, location and density of commercial establishments requiring small containerized hauling service; and the extensive use of rear-end load mixed (hand and containerized) collection routes. Absent the long-term contracts and limitations on landfill access, these firms could be expected to expand significantly their containerized hauling operations in response to an anticompetitive price increase. Requiring USA Waste and Sanifill to offer less restrictive contracts within the market and to provide access to landfill capacity to independent haulers eliminates a major barrier to entry and expansion, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The relief sought in the various markets alleged in the Complaint has been tailored to insure that, given the specific conditions in each market, the relief will protect consumers of small containerized hauling services and landfill disposal services from higher prices and poorer quality service in those markets that might otherwise result from the acquisition.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and

published in the Federal Register. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against defendants USA Waste and Sanifill. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of the voting stock Sanifill. The United States is satisfied, however, that the divestiture of the described assets, the provision of significant landfill capacity to competitors, and the contract relief outlined in the proposed Final Judgment will encourage viable waste hauling and disposal competitors in the markets identified by the United States as requiring the relief implemented. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in those markets. The divestiture, the provision of landfill capacity and the proposed contractual relief will restore the markets to the structure that existed prior to the acquisition, will preserve the existence of independent competitors in those areas, and will allow for new entry and expansion by existing firms in those markets where contract relief is sought. For the reasons discussed above, *infra* at pages 17–18, the United States concluded divestiture was not necessary in the Johnstown market because the contractual, notification, and landfill capacity agreements reached with the parties adequately address the competitive concerns.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States v. Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); see also, *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [3]

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Dated: September 6, 1996.

J. Robert Kramer II,

PA Bar #23963.

Willie L. Hudgins,

DC BAR #37127.

Attorneys, U.S. Department of Justice, Antitrust Division.

David R. Bickel,

DC Bar #393409.

Joel A. Christie,

WI Bar #1019438.

Michael K. Hammaker,

DC Bar #233684.

[1] 119 Cong. Rec. 24598 (1973). *See, United States* v. *Gillette Co.,* 406 F.Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See,* H.R. 93–1463, 93rd Cong. 2d Sess. 8-9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States v.* BNS. Inc., 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cynamid Co.,* 719 F.2d at 565.

[3] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) *aff'd sub nom. Maryland* v. *United States, 460 U.S. 1001 (1983) quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 505 F. Supp. 619, 622 (W.D. Ky 1985).

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Washington, D.C. 20530, (202) 307–1168.

Certification of Service

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., Sanifill, Inc., the Office of the Attorney General of the State of Texas, and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this 6th day of September, 1996.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Suite 500, 1735 New York Ave., NW, Washington, DC 20006

Sanifill, Inc.: c/o Kirk K. Van Tine, Baker & Botts, LLP, 1299 Pennsylvania Ave., NW, Washington, DC 20004

State of Pennsylvania: James A. Donahue, III, Senior Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120

State of Texas: Mark Tobey, Assistant Attorney General, Deputy Chief for Antitrust, Office of the Attorney General of Texas, P.O. Box 12548, Austin, TX 78711–2548

David R. Bickel,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–1168.

[FR Doc. 96–23700 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Blue Band II Consortium

Notice is hereby given that, on August 27, 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''), parties to the Blue Band II Consortium filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Boston University, Boston, MA; Hewlett-Packard Company, Palo Alto, CA; Massachusetts Institute of Technology, Cambridge, MA; SDL, Inc., San Jose, CA; University of New Mexico, Albuquerque, NM; University of Utah, Salt Lake City, Utah; The University of Texas, Austin, TX; and Xerox Palo Alto Research Center, Palo Alto, CA. The objective of the joint venture is the rapid commercialization of optoelectronic components operating in the blue and ultraviolet portion of the optical spectrum.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23697 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 23, 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''), Inter Company Collaboration for AIDS Drug Development (The Collaboration) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission. 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.

The Collaboration is planning to have an independent third party collect and distribute information about the amount of resources its members devote to various AIDS-related research and development activities. It is the Collaboration's intent to use the results of the survey to identify potential areas in which further cooperation among its members may be appropriate pursuant to the Act. The company conducting the survey is a nonprofit institution with extensive experience in conducting confidential surveys of parmaceutical companies. A questionnaire will be sent to each of the member companies of the Collaboration. Upon receipt of the completed questionnaires, the company will compile the data and circulate aggregated results to each member of the collaboration in a manner that prevents the identification of the company that submitted particular data.

No other changes have been made in either the membership or planned activities of the Collaboration. Membership in the Collaboration remains open, and the Collaboration intends to file additional written notifications disclosing all changes in membership.

On May 27, 1993, the Collaboration 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 July 6, 1993 (58 FR 36223). The last notification was filed with the Department on June 26, 1996. A notice was published in the Federal Register on July 23, 1996 (61 FR 38215).

Constance D. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23699 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International 300 MM Initiative, Inc.

Notice is hereby given that, on August 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 International 300 MM Initiative, Inc. (''I300I'') 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: AMD, Inc., Austin, TX; Hyundai Electronics Industries Co., Ltd., Kyoungki-do, KOREA; International 300 MM Initiative, Inc., Austin, TX; International Business Machines Corporation, Essex Junction, VT; Intel Corporation, Santa Clara, CA; LG Semicon Co., Ltd., Cheongju, KOREA; Lucent Technologies Inc., Murray Hill, NJ; Motorola, Inc., Austin, TX; Philips Semiconductors International B.V., Eindhoven, NETHERLANDS; Samsung Electronics Company, Ltd., Seoul, KOREA; SGS Thomson Microelectronics, Inc., Crolles Cedex, FRANCE; Siemens Components, Inc., Cupertino, CA; Taiwan Semiconductor Manufacturing Co., Hsin-Chu, TAIWAN; and Texas Instruments, Inc., Dallas, TX.

I300I's area of planned activity is to facilitate the transition to the manufacturing of semiconductors on 300 millimeter wafers and to encourage the commercial availability of equipment, materials and software from suppliers by (a) developing common performance targets for manufacturing equipment, materials, software and facilities; (b) characterizing and demonstrating 300mm capable

equipment and materials with selected suppliers; and (c) working with existing standard-setting organizations to ensure the establishment of appropriate technical standards.

Membership in I300I 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. 96–23698 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Information Infrastructure for Digital Video and Multimedia Applications Joint Venture; Correction

In notice document 96–22087 appearing on page 45458 in the issue of Thursday, August 29, 1996, in the second full paragraph of the notice, the sentence ''Membership in this joint venture remains open.'' should be deleted.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23696 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Salutation Consortium

Notice is hereby given that, on July 19, 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 Salutation Consortium 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: Kobe Steel, Ltd., Hyogo, JAPAN has been added to the venture.

No other changes have been made in the membership or the planned activity of the joint venture. Membership in the venture remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On March 30, 1995, the Salutation Consortium, under the name SmartOffice Industry Consortium, 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 June 27, 1995 (60 FR 33233).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23695 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Subgrant award report for violence against women Formula Grant Program;

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 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comments until October 17, 1996. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written commends 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 Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. 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.

Overview of this information collection:

(1) Type of information collection. New collection.

(2) The title of the form/collection. STOP Violence Against Women Formula Grant Program Subgrant Award Report

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Violence Against Women Branch, Crime Act Support Division, Bureau of Justice Assistance, 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. Primary: State, Local or Tribal Governments. Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. 56 respondents, at approximately 10 responses each: At 1 hour per response

(6) An estimate of the total public burden (in hours) associated with the collection. 560 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–23707 Filed 9–16–96; 8:45 am]

BILLING CODE 4410–21–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Proposed Information Collection Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed

and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed new collection of information to develop the economic analysis for a hexavalent chromium rulemaking that the Agency us undertaking.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before November 18, 1996. The Department of Labor is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–96–14, U.S. Department of Labor, Room N–2625, 200 Constitution Ave, N.W., Washington, D.C. 20010, telephone (202) 219–7894 (not a toll-free number). Written comments of 10 pages or less may also be transmitted by facsimile to (202) 219–5046.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Administration (OSHA) is currently developing a proposal for a revised standard for exposure to hexavalent chromium in response to a petition by the Oil, Chemical, and Atomic Workers Union (OCAW) and Public Citizen to issue an Emergency Temporary Standard under Section 6(c) of the OSH Act. The petition asked OSHA to reduce the permissible exposure limit (PEL) for hexavalent chromium to 0.5 $\mu g/m^3$ and to follow the Emergency Temporary Standard with a Section 6(b)(5) rulemaking. [The current OSHA PEL for chromium (VI) (Measured as CrO_3) is 100 $\mu g/m^3$ as a ceiling limit (29 CFR 1910.1000 Table Z–2).]

OSHA has initiated a Section 6(b)(5) rulemaking in response to the OCAW petition. The scope of the rulemaking will cover the General Industry, Agriculture, Construction, and Maritime sectors. To meet the requirements of OSHA case law, Executive Order 12866 and the Regulatory Flexibility Act, OSHA must develop an economic analysis (EA) for the standard. Under the OSH Act, the Agency must also demonstrate the economic and technological feasibility of the proposed standard.

To support its technological feasibility conclusions, OSHA must gather information on technological solutions for controlling hexavalent chromium exposure, including information on engineering controls, chemical substitution, process modifications, work practice controls, and personal protection equipment. OSHA particularly needs information linking data on the exposure control measures in use at the time of sampling and the levels of worker exposure to hexavalent chromium achieved with these controls in a wise variety of industries and job categories within these industries. Information of this type is essential in order to determine the technological feasibility of alternative PELs and to estimate the associated costs of compliance. The Agency proposes to conduct as many as 50 site visits to affected employers and to contact and interview by phone as many as 150 firms, trade associations, labor organizations, or experts.

II. Current Actions

The proposed collection of information consists of site visits to as many as 50 establishments within industries affected by the proposed standard and phone interviews with as many as 150 employers, trade associations, labor organizations, or experts in the field. Information to be sought by these site visits will consist of identification of processes that have exposures to hexavalent chromium; a description of the production technology, controls and occupations of each process; occupational exposure levels of employees at those processes; potential new technologies or controls that may reduce exposures; estimates of costs of current technology as wall as technology that could reduce exposure levels; and other means used to control or reduce exposure levels, such as administrative controls or work practices.

Type of Review: New.

Agency: Occupational Safety and Health Administration.

Title: Hexavalent Chromium Site Visits.

OMB Number: None.

Agency Number: ICR–96–14.

Frequency: Once.

Affected Public: Private businesses, federal government.

Number of Respondents: 150.

Estimated Time per Respondent: 30 hours, on average, for site visits; ½ hour on average for phone interviews.

Total Estimated Cost: $341,250.

For Further Information Contact: Anne C. Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone (202) 219–8148. Copies of the information collection request are available for inspection and copying in the Docket Office and will be immediately mailed to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies, contact OSHA's Web Page on Internet at http://www.osha.gov/.

Dated: September 11, 1996.

Marthe Kent,

Director, Office of Regulatory Analysis, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor.

Collection of information sought by OSHA for industries potentially affected by the proposed hexavalent chromium rulemaking:

1. Identification of processes or operations that may result in exposures to employees.

2. A description of the production process, its technology, and control technology.

3. A description of activities by occupation that result in worker exposures. How are employees exposed? During what work activities? What is the length and frequency of exposure?

4. How many employees work in each process with exposures to the substance in question? How many people are in each occupation at that process?

5. What data is available of exposure levels of each occupation of the process? Is historical data available?

6. What technology or controls are capable of reducing exposures? What exposure levels could be achieved with other control technologies? Are there

substitutes for hexavalent chromium? Are there other technologies employed by the industry?

7. Are the changes in administrative controls or work practices that could affect employee exposures?

8. Estimates of the cost of the various means of reducing occupational exposure levels. Estimates of the cost current controls.

9. General information from the establishment on number of employees, number of production employees, products and production levels.

10. Information about the technology, controls, and exposures for the rest of the industry.

11What are the economic benefits of installing production technology that reduces exposures?

[FR Doc. 96–23783 Filed 9–16–96; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

List of Applicants for 1997 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Announcement of qualified applicants.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces the name of the organizations that have qualified to compete for 1997 competitive grant funds.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street N.E., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria Ludgood, Director, Office of Program Services, (202) 336–8865.

Service area	Applicant name
AL–1	Legal Services Corporation of Alabama, Inc.
AL–2	Legal Services of North-Central Alabama, Inc.
AL–3	Legal Services of Metro Birmingham, Inc.
MAL	Legal Services Corporation of Alabama, Inc.
AK–1	Alaska Legal Services Corporation.
NAK–1	Alaska Legal Services Corporation.
AZ–1	Pinal & Gila Counties Legal Aid Society.
AZ–2	DNA-People's Legal Services, Inc.
AZ–3	Community Legal Services, Inc.
AZ–4	Southern Arizona Legal Aid, Inc.
NAZ–1	Pinal & Gila Counties Legal Aid Society.
NAZ–2	Community Legal Services, Inc.
NAZ–3	Papago Legal Services, Inc.
NAZ–4	Southern Arizona Legal Aid, Inc.
NAZ–5	DNA-People's Legal Services, Inc.
MAZ	Community Legal Services, Inc.
	Pinal & Gila Counties Legal Aid Society.
AR–1	Ozark Legal Services.
AR–2	Legal Services of Northeast Arkansas, Inc.
AR–3	Western Arkansas Legal Services, Inc.
AR–4	East Arkansas Legal Services.
AR–5	Center For Arkansas Legal Services.
MAR	Center For Arkansas Legal Services.
CA–1	California Indian Legal Services, Inc.
CA–2	Greater Bakersfield Legal Assistance, Inc.
	Jones and Kramer, LLC.
CA–3	Central California Legal Services.
CA–4	California Legal Foundation.
	Legal Aid Foundation of Long Beach.
CA–5	California Legal Foundation.
	Legal Aid Foundation of Los Angeles.
CA–6	Legal Aid Society of Alameda County.
CA–7	Channel Counties Legal Services Association.
	Oxnard Legal Clinic, Inc.
CA–8	San Fernando Valley Neighborhood Legal Services, Inc.
CA–9	California Legal Foundation.
	Legal Services Program for Pasadena and San Gabriel-Pomona Valley.
CA–10	Legal Aid Society of San Mateo County.
CA–11	Contra Costa Legal Services Foundation.
CA–12	Inland Counties Legal Services Inc.
CA–13	Legal Services of Northern California Inc.
CA–14	Legal Aid Society of San Diego, Inc.
CA–15	California Rural Legal Assistance, Inc.
	Leroy George Siddell.
CA–16	San Francisco Neighborhood Legal Assistance Foundation.
CA–17	Legal Aid of Marin.
CA–18	Community Legal Services, Inc.
CA–19	Legal Aid Society of Orange County, Inc.
CA–20	Legal Aid for the Central Coast.
CA–21	Leroy George Siddell.
	Tulare/Kings Counties Legal Services, Inc.
CA–22	Legal Aid for the Central Coast.
CA–23	Redwood Legal Assistance.
NCA–1	California Indian Legal Services, Inc.
MCA	California Rural Legal Assistance, Inc.
	Oxnard Legal Clinic, Inc.
CO–1	Pikes Peak Legal Services.
CO–2	Colorado Rural Legal Services, Inc.
CO–3	Legal Aid Society of Metropolitan Denver, Inc.
CO–4	Colorado Rural Legal Services, Inc.
	Pikes Peak Legal Services.
	Pueblo County Legal Services, Inc.
NCO–1	Colorado Rural Legal Services, Inc.
MCO	Colorado Rural Legal Services, Inc.
CT–1	Statewide Legal Services of Connecticut, Inc.
NCT–1	—No Applicant—
MCT	Statewide Legal Services of Connecticut, Inc.
DE–1	Legal Services Corporation of Delaware, Inc.
MDE	Legal Aid Bureau, Inc.
DC–1	Lawrence & Associates Legal Group.
	Neighborhood Legal Services Program of the District of Columbia.
FL–1	Central Florida Legal Services, Inc.
FL–2	Legal Aid Service of Broward County, Inc.
FL–3	Florida Rural Legal Services, Inc.
FL–4	Jacksonville Area Legal Aid, Inc.
FL–5	Legal Services of Greater Miami, Inc.
FL–6	Legal Services of North Florida, Inc.
FL–7	Greater Orlando Area Legal Services, Inc.
FL–8	Bay Area Legal Services, Inc.
FL–9	Withlacoochee Area Legal Services, Inc.
FL–10	Three Rivers Legal Services, Inc.
FL–11	Northwest Florida Legal Services, Inc.
FL–12	Gulfcoast Legal Services, Inc.
MFL	Florida Rural Legal Services, Inc.
GA–1	Atlanta Legal Aid Society, Inc.
GA–2	Georgia Legal Services Program.
MGA	Georgia Legal Services Program.
GU–1	Guam Legal Services Corporation.
HI–1	Legal Aid Society of Hawaii.
NHI–1	Native Hawaiian Legal Corporation.
MHI	Legal Aid Society of Hawaii.
ID–1	Idaho Legal Aid Services, Inc.
NID–1	Idaho Legal Aid Services, Inc.
MID	Idaho Legal Aid Services, Inc.
IL–1	Cook County Legal Assistance Foundation, Inc.
IL–2	Legal Assistance Foundation of Chicago.
IL–3	Land of Lincoln Legal Assistance Foundation, Inc.
IL–4	Prairie State Legal Services, Inc.
IL–5	West Central Illinois Legal Assistance.
MIL	Legal Assistance Foundation of Chicago.
IN–1	Legal Services of Maumee Valley, Inc.
IN–2	Legal Services of Northwest Indiana, Inc.

Service area	Applicant name
IN–3	Legal Services Organization of Indiana, Inc.
IN–4	Legal Services Program of Northern Indiana, Inc.
MIN	Legal Services Organization of Indiana, Inc.
IA–1	Legal Services Corporation of Iowa.
IA–2	Legal Aid Society of Polk County.
MIA	Legal Services Corporation of Iowa.
KS–1	Kansas Legal Services, Inc.
MKS	Kansas Legal Services, Inc.
KY–1	Northern Kentucky Legal Aid Society, Inc.
KY–2	Legal Aid Society, Inc.
KY–3	Central Kentucky Legal Services, Inc.
	Northeast Kentucky Legal Services, Inc.
KY–4	Northeast Kentucky Legal Services, Inc.
KY–5	Appalachian Research and Defense Fund of Kentucky.
KY–6	Cumberland Trace Legal Services, Inc.
KY–7	Western Kentucky Legal Services, Inc.
MKY	Appalachian Research and Defense Fund of Kentucky
LA–1	Capital Area Legal Services Corporation.
LA–2	Southwest Louisiana Legal Services Society, Inc.
LA–3	North Louisiana Legal Assistance Corporation.
LA–4	New Orleans Legal Assistance Corporation.
LA–5	Northwest Louisiana Legal Services, Inc.
LA–6	Acadiana Legal Service Corporation.
LA–7	Kisatchie Legal Services Corporation.
LA–8	Southeast Louisiana Legal Services Corporation.
MLA	Acadiana Legal Service Corporation.
ME–1	Pine Tree Legal Assistance, Inc.
NME–1	Pine Tree Legal Assistance, Inc.
MME	Pine Tree Legal Assistance, Inc.
MD–1	Legal Aid Bureau, Inc.
MMD	Legal Aid Bureau, Inc.
MA–1	Volunteer Lawyers Project of the Boston Bar Association, Inc.
MA–2	South Middlesex Legal Services, Inc.
MA–3	Legal Services for Cape Cod and Islands, Inc.
MA–4	Merrimack Valley Legal Services, Inc.
MA–5	New Center for Legal Advocacy.
MA–6	Massachusetts Justice Project, Inc.
MA–7	Massachusetts Justice Project, Inc.
MMA	Massachusetts Justice Project, Inc.
MI–1	Legal Services of Southeastern Michigan, Inc.
MI–2	Legal Services Organization of Southcentral Michigan.
MI–3	Wayne County Neighborhood Legal Services, Inc.
MI–4	Legal Services of Eastern Michigan.
MI–5	Legal Aid of Central Michigan.
MI–6	Lakeshore Legal Services, Inc.
MI–7	Oakland Livingston Legal Aid.
MI–8	Berrien County Legal Services Bureau, Inc.
MI–9	Legal Services of Northern Michigan, Inc.
MI–10	Legal Aid of Western Michigan.
MI–11	Legal Aid Bureau of Southwestern Michigan, Inc.
NMI–1	Michigan Indian Legal Services, Inc.
MMI	Legal Services of Eastern Michigan.
	Legal Services of Southeastern Michigan, Inc.
MP–1	Micronesian Legal Services Corporation.
MN–1	Legal Aid Service of Northeastern Minnesota.
MN–2	Judicare of Anoka County, Inc.
MN–3	Central Minnesota Legal Services, Inc.
MN–4	Legal Services of Northwest Minnesota.
MN–5	Southern Minnesota Regional Legal Services, Inc.
NMN–1	Anishinabe Legal Services, Inc.
MMN	Southern Minnesota Regional Legal Services, Inc.
MS–1	Central Mississippi Legal Services.
MS–2	North Mississippi Rural Legal Services, Inc.
MS–3	South Mississippi Legal Services Corporation.
MS–4	East Mississippi Legal Services Corporation.
MS–5	Southeast Mississippi Legal Services Corporation.
MS–6	Southwest Mississippi Legal Services Corporation.
NMS–1	Choctaw Legal Defense.
	East Mississippi Legal Services Corporation.
MMS	Central Mississippi Legal Services.
MO–1	Southeast Missouri Legal Services, Inc.
MO–2	Meramec Area Legal Aid Corporation.
MO–3	Legal Aid of Western Missouri.
MO–4	Legal Services of Eastern Missouri, Inc.
MO–5	Mid-Missouri Legal Services Corporation.
MO–6	Legal Aid of Southwest Missouri.
MMO	Legal Aid of Western Missouri.
MT–1	Montana Legal Services Association.
NMT–1	Montana Legal Services Association.
MMT	Montana Legal Services Association.
NE–1	Legal Services of Southeast Nebraska.
NE–2	Legal Aid Society, Inc.
NE–3	Western Nebraska Legal Services, Inc.
NNE–1	Legal Aid Society, Inc.
MNE	Western Nebraska Legal Services, Inc.
NV–1	Nevada Legal Services, Inc.
NNV–1	Nevada Legal Services, Inc.
MNV	Nevada Legal Services, Inc.
NH–1	New Hampshire Legal Services, Inc.
MNH	Pine Tree Legal Assistance, Inc.
NJ–1	Cape-Atlantic Legal Services, Inc.
NJ–2	Warren County Legal Services, Inc.
NJ–3	Camden Regional Legal Services, Inc.
NJ–4	Union County Legal Services Corporation.
NJ–5	Hunterdon County Legal Service Corporation.
NJ–6	Bergen County Legal Services.
NJ–7	Hudson County Legal Services Corporation.
NJ–8	Essex-Newark Legal Services Project, Inc.
NJ–9	Middlesex County Legal Services Corporation.
NJ–10	Passaic County Legal Aid Society.
NJ–11	Somerset-Sussex Legal Services Corporation.
NJ–12	Law Office of Lynn A Kenneally.
	Ocean-Monmouth Legal Services, Inc.
NJ–13	Legal Aid Society of Mercer County.
NJ–14	Legal Aid Society of Morris County.
MNJ	Camden Regional Legal Services, Inc.
	Law Office of Lynn A Kenneally.
NM–1	DNA-People's Legal Services, Inc.
NM–2	Legal Aid Society of Albuquerque, Inc.
NM–3	Southern New Mexico Legal Services, Inc.
NM–4	Northern New Mexico Legal Services, Inc.
MNM	Southern New Mexico Legal Services, Inc.
NNM–1	Southern New Mexico Legal Services, Inc.
NNM–2	DNA-People's Legal Services, Inc.
NNM–3	Indian Pueblo Legal Services, Inc.
NY–1	Legal Aid Society of Northeastern New York, Inc.
NY–2	Monroe County Legal Assistance Corporation.
NY–3	Legal Aid for Broome and Chenango, Inc.
NY–4	Neighborhood Legal Services, Inc.
NY–5	Chautauqua County Legal Services, Inc.
NY–6	Chemung County Neighborhood Legal Services, Inc.
NY–7	Nassau/Suffolk Law Services Committee, Inc.
NY–8	Legal Aid Society of Rockland County, Inc.
NY–9	Legal Services for New York City.
NY–10	Niagara County Legal Aid Society, Inc.

Service area	Applicant name
NY–11	—Service Area Not Competed for 1997—
NY–12	Monroe County Legal Assistance Corporation.
NY–13	Legal Services of Central New York, Inc.
NY–14	Legal Aid Society of Mid-New York, Inc.
NY–15	Westchester/Putnam Legal Services.
NY–16	North Country Legal Services, Inc.
NY–17	Southern Tier Legal Services.
MNY	Legal Aid Society of Mid-New York, Inc.
NC–1	Legal Services of North Carolina, Inc.
NC–2	Legal Services of Southern Piedmont, Inc.
NC–3	North Central Legal Assistance Program, Inc.
NC–4	Legal Aid Society of Northwest North Carolina, Inc.
NNC–1	Legal Services of North Carolina, Inc.
MNC	Legal Services of North Carolina, Inc.
ND–1	Legal Assistance of North Dakota, Inc.
ND–2	North Dakota Legal Services, Inc.
NND–1	Legal Assistance of North Dakota, Inc.
NND–2	North Dakota Legal Services, Inc.
MND	Southern Minnesota Regional Legal Services, Inc.
OH–1	Western Reserve Legal Services.
OH–2	Stark County Legal Aid Society.
OH–3	Legal Aid Society of Cincinnati.
OH–4	The Legal Aid Society of Cleveland.
OH–5	The Legal Aid Society of Columbus.
OH–6	Ohio State Legal Services.
OH–7	Legal Aid Society of Dayton, Inc.
OH–8	Legal Aid Society of Lorain County, Inc.
OH–9	Butler-Warren Legal Assistance Association.
OH–10	Allen County-Blackhoof Area Legal Services Association.
OH–11	Central Ohio Legal Aid Society, Inc.
OH–12	Advocates for Basic Legal Equality, Inc.
OH–13	The Toledo Legal Aid Society.
OH–14	Wooster-Wayne Legal Aid Society, Inc.
OH–15	Northeast Ohio Legal Services.
OH–16	Rural Legal Aid Society of West Central Ohio.
MOH	Advocates for Basic Legal Equality, Inc.
OK–1	Legal Aid of Western Oklahoma, Inc.
OK–2	Legal Services of Eastern Oklahoma, Inc.
NOK–1	Oklahoma Indian Legal Services, Inc.
MOK	Legal Aid of Western Oklahoma, Inc.
OR–1	Oregon Legal Services Corporation.
OR–2	Lane County Legal Aid Service, Inc.
OR–3	Multnomah County Legal Aid Service, Inc.
OR–4	Marion-Polk Legal Aid Service, Inc.
NOR–1	Oregon Legal Services Corporation.
MOR	Oregon Legal Services Corporation.
PA–1	Delaware Valley Legal Services.
	Leslie Levi Payton.
	Philadelphia Legal Assistance Center.
PA–2	Legal Services, Inc.
PA–3	Delaware County Legal Assistance Association, Inc.
	Delaware Valley Legal Services.
PA–4	Bucks County Legal Aid Society.
	Delaware Valley Legal Services.
PA–5	Laurel Legal Services, Inc.
PA–6	Southern Alleghenys Legal Aid, Inc.
PA–7	Central Pennsylvania Legal Services.
PA–8	Neighborhood Legal Services Association.
PA–9	Northern Pennsylvania Legal Services, Inc.
PA–10	Keystone Legal Services, Inc.
PA–11	Southwestern Pennsylvania Legal Aid Society, Inc.
PA–12	Delaware Valley Legal Services.
	Legal Aid of Chester County, Inc.
PA–13	Legal Services of Northeastern Pennsylvania, Inc.
PA–14	Susquehanna Legal Services.
PA–15	Northwestern Legal Services.
PA–16	Blair County Legal Services Corporation.
PA–17	Lehigh Valley Legal Services, Inc.
PA–18	Delaware Valley Legal Services.
	Montgomery County Legal Aid Service.
PA–19	Schuylkill County Legal Services, Inc.
MPA	Delaware Valley Legal Services.
	Philadelphia Legal Assistance Center.
PR–1	Puerto Rico Legal Services, Inc.
PR–2	Community Law Office, Inc.
MPR	Puerto Rico Legal Services, Inc.
RI–1	Rhode Island Legal Services, Inc.
MRI	Rhode Island Legal Services, Inc.
SC–1	Neighborhood Legal Assistance Program, Inc.
SC–2	Palmetto Legal Services.
SC–3	Carolina Regional Legal Services Corporation.
SC–4	Legal Services Agency of Western Carolina, Inc.
SC–5	Piedmont Legal Services, Inc.
SC–6	Piedmont Legal Services, Inc.
MSC	Neighborhood Legal Assistance Program, Inc.
SD–1	Black Hills Legal Services, Inc.
SD–2	East River Legal Services Corporation.
SD–3	Dakota Plains Legal Services, Inc.
NSD–1	Dakota Plains Legal Services, Inc.
MSD	Black Hills Legal Services, Inc.
TN–1	Southeast Tennessee Legal Services, Inc.
TN–2	Legal Services of Upper East Tennessee, Inc.
TN–3	Knoxville Legal Aid Society, Inc.
TN–4	Johnson & Settle, P.C.
	Memphis Area Legal Services, Inc.
TN–5	Legal Aid Society of Middle Tennessee.
TN–6	Rural Legal Services of Tennessee, Inc.
TN–7	West Tennessee Legal Services.
TN–8	Legal Services of South Central Tennessee, Inc.
MTN	Legal Services of Upper East Tennessee, Inc.
TX–1	Legal Aid of Central Texas.
TX–2	Coastal Bend Legal Services.
TX–3	Legal Services of North Texas.
TX–4	El Paso Legal Assistance Society.
TX–5	West Texas Legal Services, Inc.
TX–6	Gulf Coast Legal Foundation
TX–7	Laredo Legal Aid Society, Inc.
TX–8	Bexar County Legal Aid Association, Inc.
TX–9	Heart of Texas Legal Services Corporation.
TX–10	Texas Rural Legal Aid, Inc.
TX–11	East Texas Legal Services, Inc.
NTX–1	Texas Rural Legal Aid, Inc.
MTX	Texas Rural Legal Aid, Inc.
UT–1	DNA-People's Legal Services, Inc.
	Utah Legal Services, Inc.
NUT–1	Utah Legal Services, Inc.
MUT	Utah Legal Services, Inc.
VT–1	Legal Services Law Line of Vermont, Inc.
MVT	Legal Services Law Line of Vermont, Inc.
VI–1	Legal Services of the Virgin Islands.
VA–1	Legal Services of Northern Virginia, Inc.
VA–2	Charlottesville-Albemarle Legal Aid Society.
VA–3	Rappahannock Legal Services, Inc.
VA–4	Southwest Virginia Legal Aid Society, Inc.
VA–5	Peninsula Legal Aid Center, Inc.
VA–6	Central Virginia Legal Aid Society, Inc.
VA–7	Legal Aid Society of New River Valley, Inc.
VA–8	Legal Aid Society of Roanoke Valley.
VA–9	Tidewater Legal Aid Society.
VA–10	Virginia Legal Aid Society, Inc.
VA–11	Southside Virginia Legal Services, Inc.
VA–12	Blue Ridge Legal Services, Inc.
VA–13	Client Centered Legal Services of Southwest Virginia, Inc.
MVA	Peninsula Legal Aid Center, Inc.
WA–1	Northwest Justice Project.
NWA–1	Northwest Justice Project.
MWA	Northwest Justice Project.
WV–1	Appalachian Research and Defense Fund, Inc.
WV–2	Legal Aid Society of Charleston.
WV–3	West Virginia Legal Services Plan, Inc.

Service area	Applicant name
MWV	West Virginia Legal Services Plan, Inc.
WI–1	Legal Action of Wisconsin, Inc.
WI–2	Wisconsin Judicare, Inc.
WI–3	Legal Services of Northeastern Wisconsin, Inc.
WI–4	Western Wisconsin Legal Services, Inc.
NWI–1	Wisconsin Judicare, Inc.
MWI	Legal Action of Wisconsin, Inc.
WY–1	Legal Aid Services, Inc.
	Legal Services for Southeastern Wyoming, Inc.
	Wind River Legal Services, Inc.
WY–2	Legal Aid Services, Inc.
	Legal Services for Southeastern Wyoming, Inc.
	Wind River Legal Services, Inc.
WY–3	Legal Aid Services, Inc.
	Legal Services for Southeastern Wyoming, Inc.
	Wind River Legal Services, Inc.
NWY–1	Legal Aid Services, Inc.
	Wind River Legal Services, Inc.
MWY	Legal Aid Services, Inc.
	Wind River Legal Services, Inc.

Date Issued: September 12, 1996.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 96–23784 Filed 9–16–96; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–114]

NASA Advisory Council (NAC), Aeronautics Advisory Committee, Subcommittee on Materials and Structures; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee, Subcommittee on Materials and Structures meeting.

DATES: October 17, 1996, 8:00 a.m. to 6:00 p.m.; and October 18, 1996, 8:00 a.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1229, Room 124, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Irving Abel, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681–0001 (757/864–2934).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview of NASA's FY 97 Aeronautics Program

—High-Speed Research Materials and Structures Program Status

—Base Structures and Materials/Airframes

—Base Structures and Materials/Propulsion

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated; September 10, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96–23692 Filed 9–16–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and committee code: Advisory Panel for Biological Infrastructure (#1215)

Date and time: October 10–11, 1996, 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Karl Koehler and Berry Masters, Program Directors, Biological Instrumentation and Instrument Development, Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Telephone: (703) 306–1472.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Multi-User Biological Sciences (MBE) proposals as part of the selection process for award.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated September 11, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23798 Filed 9–16–96; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (#1173),

Date and time: October 2 and 3, 1996; 9:00 to 5:00 and 9 to noon,

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA,

Type of meeting: Open,

Contact person: Sue Kemnitzer, Executive Secretary, Room 585, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone: (703) 306–1382.

Minutes: May be obtained from the contact person at the above address.

Purpose of meeting: To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

Agenda: To discuss and work on Committee's Report to Congress, briefings by NSF staff and COESE members, and develop strategic plan for the Committee.

Dated; September 11, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23797 Filed 9–16–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking & Communications Research & Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis for NSFNET Connections Panel (#1207).

Date and time: October 8, 1996; 8:30 a.m. to 5:00 p.m.

Place: Room 1175.

Type of meeting: Closed.

Contact person(s): Mark Luker, Program Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the NSFNET Connections Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 11, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23799 Filed 9–16–96; 8:45 am]

BILLING CODE 7555–01–M

United States Antarctic Program Blue Ribbon Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: United States Antarctic Program Blue Ribbon Panel (#1531).

Date and time: October 11–12, 1996, 8 a.m.–9 p.m.

Place: Room 1235, NSF.

Type of meeting: Open.

Contact person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: The committee will receive presentations from Antarctic experts and will discuss options in the areas of research, research support, contractor tasking, military transition, cost-saving initiatives, health and safety context, environment and waste management, South Pole redevelopment, international aspects, science users' perspectives, and interagency involvement.

Dated: September 11, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–23800 Filed 9–16–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–18]

Northern States Power Company; Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing

The Nuclear Regulatory Commission is considering an application dated August 7, 1996, for a materials license, under the provisions of 10 CFR Part 72, from Northern States Power Company (the applicant or NSP) to possess spent fuel and other radioactive materials associated with spent fuel storage in an off-site independent spent fuel storage installation (ISFSI) located in Goodhue County, Minnesota. If granted, the license will authorize the applicant to store spent fuel in a dry storage cask system at the off-site ISFSI which the applicant proposes to construct and operate in Goodhue County, Minnesota. Pursuant to the provisions of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years. The NRC has previously granted the applicant a license to store up to forty eight (48) casks on-site at the Prairie Island Power Plant located in Welch, MN. However, a Minnesota law requires that NSP develop an off-site facility.

Prior to issuance of the requested license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The issuance of the materials license will not be approved until the NRC has reviewed the application and has concluded that approval of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to public health and safety. The NRC, in accordance with 10 CFR Part 51.20(b)(9), will complete an environmental impact statement. This action will be the subject of a subsequent notice in the Federal Register. Pursuant to 10 CFR 2.105, by October 17, 1996, the applicant may file a request for a hearing; 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 with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon satisfactory completion of all required evaluations, issue the materials license without further prior notice.

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 that 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 a petition, without requesting leave of the Board, up to 15 days prior to the holding of the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of 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 action

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 satisfied 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.

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, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the NRC 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 Dr. William D. Travers, Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards; 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, and to Mr. Gary Johnson, Esq., Vice President, General Counsel, and Corporate Secretary, Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding Officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application dated August 7, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the local public document room at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN 55401. The Commission's license and safety evaluation report, when issued, may be inspected at the above locations.

Dated at Rockville, Maryland, this 9th day of September 1996.

For the U.S. Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–23757 Filed 9–16–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste; Revised Notice

The 86th meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled for September 26 and 27, 1996, at the Hotel San Remo, 115 East Tropicana Avenue, Las Vegas, Nevada, in Chateau 1 and Chateau 2 is being extended to include a session on Tuesday, September 24, 1996, in the Conference Center. All other items pertaining to September 26 and 27, 1996, remain the same as published in the Federal Register on Thursday, September 5, 1996 (61 FR 46832).

The agenda for this session shall be as follows:

Tuesday, September 24, 1996—8:30 a.m. until 6:00 p.m.

The ACNW will conduct a planning session and will not formulate advice for the Commission during this session. The conduct of Committee activities, procedures and operations, as well as future priorities, will be discussed.

For further information contact: Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: September 11, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–23761 Filed 9-16–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Instrumentation and Control Systems and Computers and on Electrical Power Systems; Notice of Meeting

The ACRS Subcommittees on Instrumentation and Control Systems and Computers and on Electrical Power Systems is scheduled to hold a joint meeting on October 8, 1996, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, October 8, 1996—8:30 a.m. until the conclusion of business.

The Subcommittees will continue their review of the proposed Standard Review Plan Sections, Regulatory Guides, and Branch Technical Positions related to digital instrumentation and control systems. The Subcommittees will also review the status of NRC programs to address equipment vulnerabilities to lightning and other transients. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415-6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any

potential changes to the agenda, etc., that may have occurred.

Dated: September 11, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–23762 Filed 9–16–96; 8:45 am]

BILLING CODE 7590-01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of September 16, 23, 30 and October 7, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 16

There are no meetings scheduled for the week of September 16.

Week of September 23—Tentative

There are no meetings scheduled for the week of September 23.

Week of September 30—Tentative

Thursday, October 3

1:00 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of October 7—Tentative

Monday, October 7

2:00 p.m.
Briefing on Site Decommissioning Management Plan (SDMP) (Public Meeting) (Contact: Mike Webber, 301–415–7297)

Wednesday, October 9

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

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.

ADDITIONAL INFORMATION:

By a vote of 4–0 on September 9, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Discussion of Management and Personnel Issues'' (Closed—Ex. 2 and 6) be held on September 9, and on less than one week's notice to the public.

* * * * *

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)–415–1661).

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 wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: September 12, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–23907 Filed 9–13–96; 12:01 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22212; File No. 812–10088]

John Hancock Declaration Trust, et al.; Exemption Application

September 10, 1996.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: John Hancock Declaration Trust (the ''Trust'') and John Hancock Advisers, Inc. (the ''Adviser'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of any current or future series of the Trust and shares of any other investment company that is designed to fund variable insurance products and for which the Adviser, or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the ''Funds'') to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the ''Participating Insurance Companies''); and (b) certain qualified pension and retirement plans outside of the separate account context (the ''Eligible Plans'').

FILING DATE: The application was filed on April 17, 1996, and amended on August 29, 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 on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 7, 1996 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, John Hancock Declaration Trust, c/o Anne C. Hodsdon, President, 101 Huntington Avenue, Boston, Massachusetts, 02199.

FOR FURTHER INFORMATION CONTACT: Martha H. Platt, Senior Attorney, or Patrice 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. The Trust is a Massachusetts business trust registered under the 1940 Act as an open-end diversified management investment company. The Trust's registration statement on Form N–1A was declared effective on August 12, 1996. The Trust currently is composed of ten separate portfolios: John Hancock V.A. International Fund; John Hancock V.A. Emerging Growth Fund; John Hancock V.A. Discovery Fund; John Hancock V.A. Diversified Core Equity Fund; John Hancock V.A. Sovereign Investors Fund; John Hancock V.A. 500 Index Fund; John Hancock V.A. Sovereign Bond Fund; John Hancock V.A. Strategic Income Fund; John Hancock V.A. Global Income Fund; and John Hancock V.A. Money Market Fund. Additional portfolios may be added in the future.

2. The Adviser is registered with the SEC under the Investment Advisers Act of 1940, and will be the investment manager for each of the Trust's portfolios. The Adviser is an indirectly wholly-owned subsidiary of the John Hancock Mutual Life Insurance Company. The Adviser has engaged other registered investment advisers (''Sub-Advisers'') to conduct the investment programs of certain Trust

portfolios and has entered into investment sub-advisory agreements with each Sub-Adviser.

3. The Trust intends to offer its shares to separate accounts (''Separate Accounts''), of both affiliated and unaffiliated insurance companies, supporting variable annuity and variable life insurance contracts. Insurance companies whose separate accounts will own shares of one or more portfolios of the Funds are referred to herein as ''Participating Insurance Companies.'' Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract which it issues.

4. The Trust also intends to offer one or more portfolios of its shares directly to Eligible Plans. The Funds' shares sold to Eligible Plans which are subject to the Employee Retirement Income Security Act of 1984, as amended, may be held by the trustee(s) of the Eligible Plans.

5. The Adviser has no plans to offer investment advisory services to Eligible Plans or Eligible Plan participants (''Participants''), and will not act as investment adviser to any of the Eligible Plans that will purchase shares of the Trust.

Applicants' Legal Analysis

1. In connection with scheduled premium variable life insurance contracts invested in a separate account registered under the 1940 Act as a Unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 14(b) of the 1940 Act. Rule 6e–2(b)(15), paragraphs (i) and (ii) provide partial conditional exemptions from Section 9(a) of the 1940 Act, and Rule 6e–2(b)(15)(iii) provides a partial exemption from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same company or any affiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management company are offered to variable annuity or variable life insurance separate accounts of unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as ''shared funding.''

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Section 9(a), and from Sections 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying Fund's shares. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or any affiliated life insurance company offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for flexible premium variable life insurance. However, Rule 6e–3(T) does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. Applicants state that the relief granted by the existing Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is not affected by the purchase of shares of the Funds by an Eligible Plan. Applicants also state that exemptive relief is requested with respect to sale of shares to Eligible Plans because the separate accounts investing in the Funds are themselves investment companies seeking relief and do not wish to be denied such relief if the Funds sell shares to Eligible Plans.

5. Rules 6e–2(B)(15)(i) and 6e–3(T)(b)(15)(i) provide, in effect, that the eligibility restrictions of Section 9(a) do not apply to an officer, director, or employee of an insurance company or any of its affiliates, who does not participate directly in the management or administration of the underlying fund. Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) provide, in effect, that the fact that any individual disqualified under Section 9(a) (1) or (2) is affiliated with the insurance company would not, by virtue of Section 9(a)(3), disqualify the insurance company from serving in any capacity with respect to an underlying fund, provided that the disqualified individual did not participate directly in the management or administration of the fund.

6. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of that Section's policy and purposes. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies managed, administered, or invested in by that organization. Those individuals who participate in the management or administration of the Funds will remain the same regardless of which separate accounts or insurance companies use the Funds. Accordingly, Applicants state that applying the requirements of Section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. Therefore, Applicants submit that it is unnecessary to apply section 9(a) to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund as the funding medium for variable contracts. Additionally, Applicants state that for the same reasons as set forth above with respect to investments by separate accounts, there is no regulatory purpose to be served in extending the monitoring requirements because of investment in the Funds by Plans.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Pass-through voting privileges will be provided with respect to all contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for contract owners.

8. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A)(1) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of contract owners in favor of any change in such company's investment policies, principal underwriter, or any investment adviser (subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

9. The prohibitions on mixed and shared funding might reflect concerns regarding possible divergent interests between or among different classes of investors. However, Applicants state that the possibility of divergent interest should not be increased substantially by virtue of mixed and shared funding or investment by Eligible Plans, and further that compliance with the conditions set forth below will minimize the risk that a divergence of interests will result in any adverse impact upon investors.

10. Applicants submit that there is no reason why the investment policies of any portfolio of the Funds would or should be materially different from what it would or should be if it funded only annuity contracts or only scheduled or flexible premium life insurance contracts. Each type of insurance product is designed as a long-term investment program. The Funds' portfolio swill not be managed to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance contracts, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity contract owners and variable life insurance contract owners is composed of individuals of diverse financial status, age, and insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers.

11. Applicants note that while there are differences in the manner in which distributions from variable contracts and Eligible Plans are taxed, these differences will have no impact on the Funds and therefore the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Eligible Plan is unable to net purchase payments to make the distributions, the Separate Account and Eligible Plan will redeem shares of the Funds in the same manner and using the same procedures as each other. Each will redeem shares of the Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. An Eligible Plan will make distributions in accordance with the terms of the Eligible Plan. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract. Distributions and dividends will be declared and paid by the Funds without regard to the character of the shareholder. Based upon the foregoing, Applicants have concluded that the tax consequences of distributions from variable contracts and Eligible Plans do not raise any conflicts of interest with respect to the use of the Funds.

12. In connection with any meeting of shareholders, the Funds will inform each shareholder, including each Separate Account and Eligible Plan, of information necessary for the meeting. A Participating Insurance Company will then solicit voting instructions consistent with the ''pass-through'' voting requirement. Separate Accounts and Eligible Plans will each have the opportunity to exercise voting rights with respect to their shares in the Funds, although only the Separate Accounts are required to follow the pass-through voting procedure. The voting rights provided to Eligible Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Eligible Plans with respect to shares of mutual funds sold to the general public.

13. Applicants submit that there are no conflicts between contract owners of Separate Accounts and Participants with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Eligible Plans or Participants in participant-directed Eligible Plans can make the decision quickly and implement the redemption of their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, or is the case with most Eligible Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of contract owners and the interests of Eligible Plans are in conflict, the issues can be almost immediately resolved in that the trustees of the Eligible Plans can, on their own, redeem the shares out of the Funds.

14. Applicants submit that there is no greater potential for material irreconcilable conflicts arising between the interests of Participants and contract owners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

15. Applicants state that the ability of the Funds to sell their shares directly to Eligible Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Participant. ''Senior security'' is defined under Section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of Participants or contract owners under variable annuity and variable life insurance contracts, the Eligible Plans and the variable annuity separate

accounts and variable life insurance separate accounts only have rights with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

16. Applicants state that various factors have kept more insurance companies from offering variable annuity contracts and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public as investment experts to whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of a Fund as a common investment medium for variable contracts would reduce or eliminate these concerns.

17. Mixed and shared funding, as well as investment in the Funds by Eligible Plans, should provide several benefits to contract owners. The Separate Accounts of Participating Insurance Companies will benefit only from the investment and administrative expertise available through the Funds, but also from the cost efficiencies and investment flexibility afforded by a larger pool of funds. It would permit a greater amount of assets available for investment, thereby promoting economies of scale, permitting greater diversification, and making the addition of new portfolios more feasible. Additionally, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, an this should result in increased competition with respect to both various contract design and pricing, which can be expected to result in more product variation and lower charges.

Applicants' Conditions

If the requested Order is granted, Applicants consent to the following conditions:

1. A majority of the Board of Trustees or Directors of each Fund (each, a ''Board'') will consist of persons ho are not ''interested persons'' of that Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition will be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any material irreconcilable conflict among the interests of contract owners of all Separate Accounts and the interests of Participants under Eligible Plans investing in the respective Funds. An irreconcilable material conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investment of any portfolio of the Funds are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; and (g) if applicable, a decision by a Participating Eligible Plan (as defined below) to disregard the voting instructions of Participants.

3. The Adviser (or any other investment adviser of a Fund), any Participating Insurance Company, and any Eligible Plan that executes a Fund participation agreement upon becoming an owner of ten percent (10%) or more of the assets of the Fund (referred to herein as a ''Participating Eligible Plan''), will report any potential or existing conflicts to the Board. The Adviser, Participating Insurance Companies, and Participating Eligible Plans will assist the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and an obligation by each Participating Eligible Plan to inform the Board whenever Participant voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Participating Eligible Plans investing in the Funds under their agreements governing participation in each Fund, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of contract owners and Participants, as applicable.

4. If it is determined by a majority of the Board, or a majority of its disinterested directors, that a material irreconcible conflict exists with respect to a portfolio of a Fund, the relevant Participating Insurance Companies and Participating Eligible Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors, of that Fund), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from that Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of that Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners, variable life insurance contract owners, or contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the Fund's election, to withdraw its Separate Account's investment in that Fund (or any portfolio thereof, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Eligible Plan's decision to disregard Participant voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Eligible Plan may be required, at the Fund's election, to withdraw its investment in that Fund (or any portfolio thereof), and no charge

or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Eligible Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of contract owners and Participants, as applicable.

5. For purposes of Condition 4, a majority of the disinterested members of the Board will determine whether any proposed action adequately remedies any irreconcilable material conflict, but in no event will a Fund or the Adviser (or any other investment adviser of a Fund) be required to establish a new funding medium for any variable contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the irreconcilable material conflict. No Participating Eligible Plan will be required by Condition 4 to establish a new funding medium for such Eligible Plan if (a) an offer to do so has been declined by vote of a majority of Participants materially and adversely affected by the irreconcilable material conflict or (b) pursuant to governing Eligible Plan documents and applicable law, the Participating Eligible Plan may make such decision without Participant vote.

6. The Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly in writing to the Advisor and to all Participating Insurance Companies and all Participating Eligible Plans.

7. Participating Insurance Companies will pass through the voting privileges of Fund shares to all contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for contract owners. Accordingly, Participating Insurance Companies will vote shares of the Funds held in their Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Each Participating Insurance Company will vote Fund shares held in its Separate Accounts for which voting instructions from contract owners are not timely received, as well as Fund shares held in its general account or otherwise attributed to it, in the same proportion as those shares for which voting instructions are timely received. Participating Insurance Companies will be responsible for assuring that each of their Separate Accounts investing in a Fund calculates voting privileges in a manner consistent with the Separate Accounts of other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in that Fund. Each Participating Eligible Plan will vote as required by applicable law and governing Eligible Plan documents.

8. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in shares of the Fund), and, in particular, each Fund will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings), or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c)) as well as with Section 16(a) of the 1940 Act and, if applicable, 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Fund will disclose in its prospectus that: (a) the Fund is intended to be a funding vehicle for all types of variable annuity contracts and variable life insurance contracts offered by various Participating Insurance Companies and for Eligible Plans; (b) material irreconcilable conflicts may possibly arise among various contract owners and Participants; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such conflict. Each Fund will notify all Participating Insurance Companies that Separate Account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate.

10. If and to the extent that Rule 6e–2 or 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Funds and/or Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

11. The Adviser, and the Participating Insurance Companies and Participating Eligible Plans will at least annually submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may fully carry out the obligations imposed upon it by the conditions contained in this Application, and said reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Participating Eligible Plans to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participating Insurance Companies and Participating Eligible Plans under their agreements governing their participation in the Funds.

12. All reports received by the Board of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying the Adviser and Participating Insurance Companies and Participating Eligible Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

13. If an Eligible Plan should become an owner of ten percent (10%) or more of the assets of a Fund, such Eligible Plan will execute a participation agreement with that Fund including the conditions set forth herein to the extent applicable. An Eligible Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Funds.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and 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. 96–23702 Filed 9–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22211; 812–10152]

LifeUSA Funds, Inc., et al.; Notice of Application

September 10, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: LifeUSA Funds, Inc. (''LUSA Fund''), IAI Investment Funds I, Inc., IAI Investment Funds II, Inc., IAI Investment Funds III, Inc., IAI Investment Funds IV, Inc., IAI Investment Funds V, Inc., IAI Investment Funds VI, Inc., IAI Investment Funds VII, Inc., IAI Investment Funds VIII, Inc. (the IAI Investment Funds I through VIII collectively, ''Underlying Funds''), Investment Advisers Inc. (''IAI''), and IAI International Limited.

RELEVANT ACT SECTION: Order requested under section 6(c) of the Act from section 12(d)(1) and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit LUSA Fund to invest substantially all of its assets in the securities of certain affiliated investment companies in excess of the limits of Section 12(d)(1) of the Act.

FILING DATE: The application was filed on May 15, 1996, and amended on July 31, 1996, and August 14, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

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 October 7, 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. Applicants: 3700 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, 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. LUSA Fund is a Minnesota corporation that will register as an open-end management investment company under the Act. LUSA Fund will be authorized to issue its shares in more than one series, each of which will pursue a distinct set of investment objectives by investing substantially all of its assets in shares of certain portfolios of the Underlying Funds (''Underlying Portfolios''). LUSA Fund will consist initially of four portfolios: the Aggressive Growth Portfolio, the High Growth Portfolio, the Moderate Growth Portfolio, and the Conservative Growth Portfolio (the ''LUSA Portfolios'').

2. IAI is a registered investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). IAI also is registered as a transfer agent under the Securities Exchange Act of 1934. IAI is the investment adviser and transfer agent for the Underlying Funds. IAI will serve as investment adviser and transfer agent to LUSA Fund. IAI will also serve as investment adviser, provide overall management, transfer agency, dividend disbursement and investor services to the LUSA Portfolios and the Underlying Portfolios.

3. IAI International is a registered investment adviser under the Advisers Act. IAI International is the subadviser to the Underlying Portfolios of IAI Investment Funds III, Inc.

4. Applicants propose a ''fund of funds'' arrangement whereby LUSA Fund will register for sale its shares under the Securities Exchange Act of 1933, and the LUSA Portfolios will invest substantially all of their assets in shares of the Underlying Funds that are part of the same ''group of investment companies'' as defined in rule 11a–3 of the Act. In addition, investments may be made in money market instruments for temporary defensive purposes and to maintain liquidity.

5. Each LUSA Portfolios will allocate its assets among one or more Underlying Portfolios consistent with its investment objective. IAI, as investment adviser to the LUSA Portfolios, will allocate each Portfolio's assets among the Underlying Portfolios in accordance with quantitative and fundamental analyses of current market and economic conditions.

6. IAI will not initially charge the LUSA Portfolios an advisory fee, although it may do so in the future. IAI may charge the LUSA Portfolios for all other services relating to the operation of the LUSA Portfolios. In addition, LUSA Portfolio shareholders will indirectly pay their proportionate share of Underlying Portfolio advisory fees and expenses. Further, LUSA Portfolio shares may be subject to sales charges including front-end and deferred sales charges, redemption fees, service fees and 12b–1 fees. Initially, LUSA Portfolios will be subject to a front-end sales charge and distribution fees.

7. Applicants believe that LUSA Fund will provide investors with a simple and effective means of structuring a diversified mutual fund investment program suited to their general needs.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt any person or transaction if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from sections 12(d)(1)(A) and (B) to the extent necessary to permit LUSA Fund to

acquire shares of the Underlying Funds and to permit each Underlying Fund to sell shares to LUSA Fund. Applicants request that any relief granted pursuant to the application also apply to any future LUSA Portfolio, and any Underlying Fund or open-end management investment company or series thereof that is or will be part of the same ''group of investment companies'' as LUSA Fund (as defined in rule 11a–3 under the Act), subject to the terms and conditions of the application. For the reasons discussed below, applicants believe it is appropriate for the SEC to exercise its authority under section 6(c) to grant the requested exemptions.

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when an investment company acquires shares of another investment company, including unnecessary duplication of costs (such as sales loads, advisory fees and administrative costs), undue influence by a fund holding company over its underlying funds, the threat of large scale redemptions of the securities of the underlying investment companies, and unnecessary complexity.

4. Applicants believe relief from section 12(d)(1) is appropriate because none of these potential or actual abuses are present in the proposed fund of funds structure. Applicants state that, with respect to advisory fees, the directors of LUSA Fund, before approving advisory fees, will find that any advisory fees charged under an advisory contract are based upon services provided that are in addition to, rather than duplicative of, services provided under any underlying portfolio advisory contract.

5. Applicants state that because any sales charges or service fees relating to the shares of LUSA Fund will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealer's (''NASD'') Conduct Rules when aggregated with any sales charges or service fees that LUSA Fund pays relating to its acquisition, holding, or disposition of Underlying Fund shares, the proposed structure will not raise the sales charge layering concerns underlying section 12(d)(1).

6. Applicants note that, although administrative and other fees may be charged at both the LUSA Fund and Underlying Portfolio levels, overall, administrative and other expenses may be reduced at both levels under the proposed arrangement.

7. Applicants also state that there is little risk that IAI will exercise inappropriate control over the Underlying Funds. Applicants believe that because IAI is the investment adviser to the Underlying Funds and because LUSA Fund will only acquire shares of Underlying Funds, a redemption from one Underlying Fund will simply lead to the investment of the proceeds in another Underlying Fund.

8. No LUSA Portfolio will invest in any Underlying Portfolio unless the Underlying Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company. The exception for securities received as a dividend or as a result of a plan of reorganization is based on section 12(d)(1)(D). Section 12(d)(1)(D) permits an investment company to exceed the limits contained in section 12(d)(1)(A) in the event that the investment company exceeds the limits because it acquires investment company shares as a dividend, as a result of an offer of exchange, or pursuant to a plan of reorganization (other than a plan devised for the purpose of evading section 12(d)(1)(A)). No Underlying Portfolio will participate in any plan of reorganization devised for the purpose of evading the provisions of section 12(d)(1)(A).

9. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 17(b) of the Act authorizes the SEC to 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. Because LUSA Fund and the Underlying Funds are advised by IAI, LUSA Fund and the Underlying Funds could be deemed to be affiliates of one another. Accordingly, purchases by LUSA Fund of the shares of the Underlying Funds, and the sale by the Underlying Funds of their shares to LUSA Fund could be deemed to be principal transactions between affiliated persons under section 17(a). Accordingly, applicants request an exemption under sections 17(b) and 6(c) from the prohibitions of section 17(a).[1]

10. Applicants believe that relief is appropriate because the consideration paid for the sale and redemption of shares of the Underlying Portfolios is fair and reasonable in that it will be based upon the net asset values of the Underlying Portfolios, and the investment of assets of the LUSA Portfolios in shares of the Underlying Portfolios will be effected in accordance with the investment restrictions and policies of each LUSA Portfolio. Applicants also believe that the proposed arrangement is consistent with the purposes of the Act.

Applicants' Conditions

Applicants will comply with the following procedures as conditions to any SEC order:

1. LUSA Fund and each Underlying Portfolio will be part of the same ''group of investment companies'' as defined in rule 11a–3 of the Act.

2. LUSA Fund will not invest in any Underlying Portfolio unless the Underlying Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. At least a majority of LUSA Fund's directors will not be ''interested persons'' as defined in section 2(a)(19) of the Act.

4. Any sales charge or service fees charged with respect to shares of LUSA Fund, when aggregated with any sales charges or service fees paid by LUSA Fund relating to its acquisition, holding or disposition of shares of the Underlying Portfolio, shall not exceed the limits set forth in rule 2830 of the NASD's Conduct Rules.

5. Prior to approving any advisory contract under section 15 of the Act, the board of directors of LUSA Fund, including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under such contract, if any, are based on services that are in addition to, rather than duplicative of, the services provided under any Underlying Portfolios advisory contract. These findings and their bases will be recorded fully in the minute books of LUSA Fund.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment

[1] Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used, along with section 17(b), to grant relief from section 17(a) to permit an ongoing series of future transactions.

Management as soon as reasonably practicable following the fiscal year-end of each LUSA Portfolio, unless the chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) Monthly average total assets for each LUSA Portfolio and each Underlying Portfolios; (b) monthly purchase and redemptions (other than by exchange) for each LUSA Portfolio and each Underlying Portfolio; (c) monthly exchanges into and out of each LUSA Portfolio and each Underlying Portfolio; (d) month-end allocations of each LUSA Portfolio's assets among the Underlying Portfolios; (e) annual expense ratios for each LUSA Portfolio and each Underlying Portfolio; and (f) a description of any vote taken by the shareholders of any Underlying Portfolio, including a statement of the percentage of votes cast for and against the proposal by LUSA Fund and by the other shareholders of that Underlying Portfolio.

For the SEC, by the Division of Investment Management, Under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23703 Filed 9–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22216; File No. 812–9994]

Transamerica Occidental Life Insurance Company, et al.

September 11, 1996.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Transamerica Occidental Life Insurance Company (''Transamerica''), Transamerica Occidental's Separate Account Fund C (''Old Account''), Transamerica Variable Insurance Fund, Inc. (''Fund''), Transamerica Securities Sales Corporation (''TSSC''), and Transamerica Occidental Separate Account C (''New Account'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 17(b) of the 1940 Act granting exemptions from the provisions of Section 17(a) thereof, and under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applications seek an order: (1) exempting Transamerica, the Old Account and the Fund from the provision of Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act, to the extent necessary to permit the transfer of the securities and other instruments (''portfolio investments'') held by the Old Account to the Growth Portfolio of the Fund in exchange for shares of the Growth Portfolio of the Fund; and (2) exempting Transamerica, TSSC, the New Account, as restructured into a unit investment trust following the transfer of the Old Account's portfolio investments to the Growth Portfolio, and certain principal underwriters other than TSSC (''Future Underwriters'') from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, pursuant to Section 6(c) of the 1940 Act, to the extent necessary to permit the deduction of a mortality and expense risk change from the New Account under certain variable annuity contracts.

FILING DATE: The application was field on February 14, 1996, and amended on August 8, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 7, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Regina M. Fink, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive Street, Los Angeles, California 90015.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Transamerica, a wholly-owned subsidiary of the Transamerica Corporation, is a stock life insurance company incorporated in California. Transamerica is the depositor of the Old Account and will become the depositor of the New Account pursuant to the proposed transactions and associated restructuring of the Old Account (the ''Reorganization'').

2. The Old Account was established by Transamerica as a separate investment account to fund three non-qualified variable annuity contracts (''Contracts''). The Old Account meets the definition of a ''separate account'' under the 1940 Act and is registered under the 1940 Act as an open-end management investment company. The Old Account consists of a single portfolio of primarily equity securities. The investment objective of the Old Account is long-term capital growth. Transamerica is the investment adviser for the Old Account. Transamerica has contracted with Transamerica Investment Services, Inc., a wholly-owned subsidiary of Transamerica Corporation, to act as the Old Account's sub-adviser.

3. The Fund is registered open-end, diversified management investment company, established as a Maryland corporation on June 23, 1995. A registration statement on Form N–1A was filed with the Commission on November 3, 1995. The Fund currently consists of one investment portfolio: the Growth Portfolio (''Portfolio''). Additional portfolios may be created from time to time. The Fund initially will offer its shares solely to the New Account as a funding vehicle for the variable annuity contracts supported by the New Account. In the future, the Fund may offer its shares to other insurance company separate accounts supporting other variable annuity or variable life insurance contracts and to qualified pension and retirement plans.

4. The investment objective of the Growth Portfolio is long-term capital growth. Pursuant to an investment advisory agreement and subject to the authority of the Fund's Board of Directors, Transamerica will serve as the Portfolio's investment adviser and will engage Transamerica Investment Services, Inc. to serve as the Fund's sub-adviser.

5. As part of the Reorganization, TSSC, a wholly-owned subsidiary of Transamerica Insurance Corporation of California, which is a wholly-owned subsidiary of Transamerica Corporation, will replace Transamerica Financial Resources, Inc. as the principal underwriter for the Contracts. Future Underwriters also may serve as distributors and principal underwriter for the Contracts. Any such Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and will be a member of the National Association of Securities Dealers, Inc.

6. As part of the Reorganization, the New Account will be registered as a unit investment trust on Form N–4 under the 1940 Act. The New Account will invest exclusively in shares of the Growth Portfolio.

7. Applicants state that three types of Contracts have been offered through the Old Account in connection with certain retirement programs—Annual Deposit, Single Deposit Deferred and Single Deposit Immediate. Purchase payments made under the Contracts are invested in a portfolio which is comprised principally of equity securities. The Contracts are no longer being offered for sale but additional payments may be made on certain outstanding Contracts.

8. The Annual Deposit Contract and the Single Deposit Deferred Contract provide deferred variable annuities. The Single Deposit Immediate Contract provides an immediate variable annuity. The contracts also provide for, among other things: (a) a variety of annuity payout options beginning on the retirement date; (b) certain minimum and maximum initial and subsequent purchase payments; and (c) a death benefit payable if the annuitant dies before the retirement date.

9. Transamerica deducts an administrative expense charge from each payment made under the Contracts for record keeping and administrative functions related to the Contracts and each Contract owner's account. The charge is guaranteed not to increase and is equal to 2.5% of the first $15,000 of payments made under the contract, 1.5% of the next $35,000 of payments made under the Contract, 0.75% of the next $100,000 of payments made under the Contract, and no charge for payments exceeding $150,000 under the Contract. This charge will continue to be deducted after the Reorganization and will be deducted in reliance upon Rule 26a–1 under the 1940 Act.

10. Transamerica deducts a sales charge from each payment made under the Contracts which is equal to 6.5% of the first $15,000 of payments made under the Contract, 4.5% of next $35,000 of payments made under the contract, 2.0% of the next $100,000 of payments made under the Contract, and no charge for payments exceeding $150,000 under the contract. The sales charge covers expenses relating to the sales of the Contracts. Transamerica will continue to deduct the charge after the Reorganization. Transamerica does not anticipate that the sales charge has or will generate sufficient revenue to pay the cost of distributing the Contracts. If these charges are insufficient to cover Transamerica's expenses, the deficiency will be met from Transamerica's general account, which may include amounts derived from the charge for mortality and expense risks.

11. Transamerica will impose a daily charge on the assets of the New Account to compensate it for bearing certain mortality and expense risks in connection with the Contracts. The maximum amount of the mortality and expense risk charge is equal to an effective annual rate of 1.10% (of which approximately 0.77% is attributable to mortality risk and approximately 0.33% is attributable to expense risk) of the value of the net assets of the New Account. This charge is guaranteed not to increase and will continue to be assessed after the retirement date (the date the first annuity payment is made under a Contract) if annuity payments are made on a variable basis.

12. The mortality risk borne by Transamerica arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contracts) regardless of how long all annuitants or any individual annuitant may live. The mortality risk assumed by Transamerica is the risk that the persons on whose life annuity payments depend, as a group, will live longer than Transamerica's actuarial tables predict. In this event, Transamerica guarantees that annuity payments will not be affected by a change in mortality experience that results in the payment of greater annuity income than assumed under the annuity options in the Contract.

13. The expense risk assumed by Transamerica is the risk that Transamerica's actual expenses in issuing and administering the Contracts and operating the New Account will be more than the charges assessed for such expenses.

14. A fee at an annual rate of 0.30% of the average daily net assets of the Old Account is charged for Transamerica's advisory services. Under the proposed restructuring, the Growth Portfolio will pay Transamerica an advisory fee for managing its investment and business operations which is expected to be equal to an effective annual rate of 0.75% of the average daily net assets of the Growth Portfolio.

15. Transamerica will deduct the aggregate premium taxes paid on behalf of a particular Contract either from: (a) payments as they are received; or (b) the accumulated account value when a conversion is made to provide annuity benefits. Premium taxes currently range up to 3.5%.

16. With respect to Contract outstanding on the date of the Reorganization, Transamerica has agreed to waive a portion of the mortality and expense risk charge to the extent that the sum of the annual expenses to be charged against the Contracts by the New Account plus the Fund's total annual expenses exceeds the annual expenses that would have been charged by the Old Account had the Reorganization not occurred. Any such waiver will remain in effect for the duration of the Contracts and will operate to prevent Contract owners from being charged higher overall fees after the Reorganization than before the Reorganization.[1]

The Proposed Reorganization

1. The Board of Directors of Transamerica, the Board of Managers of the Old Account, and the Board of Directors of the Fund, including a majority of the disinterested members of each of the latter two, have approved an Agreement and Plan of Reorganization (the ''Plan'') and have each adopted resolutions authorizing (1) the restructuring of the old Account from a managed separate account to a separate account organized as a unit investment trust, and (2) the transfer of the portfolio assets and related liabilities of the Old Account to the Growth Portfolio in exchange for shares of the Growth Portfolio of equal value. The Plan is subject to the consideration and approval of persons entitled to vote with respect to the old Account (the ''Old Account Voters'').

2. In connection with its approval of the Plan, the Board of Managers of the Old Account, including a majority of disinterested members, has determined that the Reorganization is in the best interests of the Old Account and that the interests of existing Contract owners will not be diluted as a result of the Reorganization. The Board of Directors of the Fund, including a majority of disinterested members, has determined that the Reorganization is in the best interests of the Fund and that the interests of existing Contract owners will not be diluted as a result of the Reorganization.[2]

3. On the closing date of the Reorganization, Transamerica will

[1] The full 1.10% mortality and expense risk charge is being deducted from the assets of the Old Account. Under the terms of the Plan of Reorganization, Transamerica has agreed to waive or reimburse the mortality and expense risk charge on Contracts outstanding as of the date of the Reorganization to the extent that the sum of annual expenses to be charged by the Fund and the New Account exceeds 1.40% during any year. Applicants currently expect that the mortality and expense risk charge will be assessed at an annual rate of 0.55% of the net assets in the New Account.

[2] The membership of the Board of Managers of the Old Account is the same as that of the Board of Directors of the Fund.

transfer the portfolio assets and related liabilities of the Old Account to the Growth Portfolio of the Fund in exchange for shares of the Growth Portfolio of equal value. Transamerica will record shares issued by the Fund with respect to the Growth Portfolio as assets of the New Account.[3] The indirect interests of Contract owners in the Growth Portfolio immediately following the Reorganization will be equal to their interest in the Old Account immediately prior to the Reorganization.

4. The use of a common underlying investment vehicle will enhance investment flexibility for Contract owners. It is expected that the Reorganization also will reduce costs through less complex record keeping for the New Account, administrative efficiencies, and economies of scale. Contract owners also may benefit to the extent that the common management of a larger asset base will enhance investment flexibility and return, and increase the potential for additional portfolios.

5. The Growth Portfolio will have the same investment objective, substantially the same investment policies and restrictions, the same Board of Directors, and the same investment adviser and sub-adviser as the Old Account, provided such arrangements are approved by the Old Account Voters. The investment advisory fee for the Growth Portfolio may be higher than the current management fee charged to the old Account. The Fund may incur certain other operating expenses which, when added to the investment advisory fee incurred by the Growth Portfolio, results in an amount that may exceed the sum of the investment advisory charge and the other charges currently imposed against the assets of the Old Account. However, if the annual expenses to be charged by the Fund and New Account exceed the annual expenses that would have been charged by the old Account had the Reorganization not occurred, then, as to Contracts outstanding as of the closing date of the Reorganization, Transamerica will reduce the mortality and expense risk charge to fully offset the effect of any and all expenses of a type or in an amount which would not have been borne by the Old Account had the Reorganization not occurred.

6. Transamerica will assume all costs to be incurred in effecting the transactions. The Reorganization will not affect the total amount of fees and charges assessed, directly or indirectly, under existing Contracts. Therefore, the Reorganization will not have any adverse economic impact on Contract owners.

7. Following the Reorganization, Transamerica will offer each Contract owner the opportunity to instruct Transamerica in voting the Growth Portfolio shares attributable to that Contract owner on matters for which Contract owners currently have voting rights. Transamerica will vote shares of the Growth Portfolio held by the New Account which are deemed attributable to the Contracts for which instructions are not provided in proportion to instructions received from the Contract owners. Shares of the Growth Portfolio held by the New Account which are not deemed attributable to Contract owners also will be voted in the same proportions on each issue as the votes received from Contract owners.

Applicants' Legal Analysis

Affilated Transactions

1. Section 17(a) of the 1940 Act generally prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling or purchasing any security or other property to or from such registered investment company. Section 17(b) of the 1940 Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the 1940 Act if evidence establishes that: (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Each applicant may be deemed to be an affiliated person of the other Applicants or an affiliated person of an affiliated person by virtue of being under the common control of Transamerica, or having Transamerica as investment adviser, under Section 2(a)(3) of the 1940 Act, and the Reorganization may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants.

3. Rule 17a–8 under the 1940 Act provides exemptive relief for sales of substantially all the assets of one registered investment company to another if such companies are affiliated solely because of common directors, officers or investment advisers. Because of the various relationships among them, Applicants state that they may not be able to rely on Rule 17a–8 in connection with the Reorganization. Applicants state that they intend to conform to the conditions set forth in Rule 17a–8, however, including the requirement that a majority of the independent directors of the Board of Managers of the Old Account and a majority of the independent directors of the Board of Directors of the Fund make certain determinations.

4. Applicants maintain that the proposed Reorganization is in the best interests of the Old Account, benefiting existing Contract owners by facilitating the future expansion of investment alternatives under the Contracts. The addition of new investment portfolios with different investment objectives will be accomplished more economically through the use of a unit investment trust than by the establishment of a new management separate account. Applicants also maintain that, to the extent the Fund is used to fund other separate accounts and qualified pension and retirement plans, Contract owners will benefit from the economies of scale involved, particularly with respect to the level of fixed administrative expenses.

5. Applicants state the conversion of the Old Account from a management investment company to a unit investment trust will result in Contract owner interests which, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Reorganization. The exchange of the portfolio assets of the Old Account for shares of the Growth Portfolio will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Transamerica will assume all expenses incurred in preparing for and carrying out the transactions. In addition, the Fund will be organized at no expense to the Old Account or Contract owners. As a result, Contract owners' interests in the New Account immediately after the transactions will be equal to their former interests in the Old Account immediately prior to the transactions, and such Contract owners' interests will not be diluted as a result of the Reorganization.

[3] The total net assets of the Old Account will be determined, in the customary manner, as of the business day immediately preceding the effective date of the Reorganization. The number of shares of the Growth Portfolio of the Fund to be issued to the New Account will be determined by dividing the value of the net assets to be transferred from the old Account by the net asset value per share of the Growth Portfolio. Both determinations will be made in accordance with Section 22(c) and Rule 22c–1.

6. Applicants state that the Reorganization will not require the liquidation of any assets of the Old Account because the Reorganization will take the form of an exchange of the portfolio investments of the Old Account for shares of the Growth Portfolio. Because the investment policies and restrictions of the Growth Portfolio will be identical in substance to those of the Old Account, the only sales of Old Account assets following the Reorganization will be those arising in the ordinary course of business. Therefore, neither the Old Account nor the Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets.

7. Applicants state that Transamerica has received a private letter ruling from the Internal Revenue Service which confirms that the Reorganization will be a tax-free event.

8. Applicants maintain that because the investment objective of the Growth Portfolio will be substantially identical to the investment objectives of the Old Account immediately prior to the Reorganization, the transactions are consistent with the objectives and policies of the Old Account and the Growth Portfolio. Applicants state that, in any case, Transamerica will obtain Contract owner approval of the transactions by at least the vote required under the 1940 Act to effect any change in fundamental investment policy. This eliminates any questions that might otherwise exist as to whether investment in the Growth Portfolio is in compliance with the investment objective and policies of the Old Account.

9. Applicants represent that the proposed transactions do not present any of the issues or abuses that the 1940 Act was designed to prevent. Moreover, Applicants submit that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors.

Mortality and Expense Risk Charge

1. 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. 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 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. 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 the 1.10% maximum mortality and expense risk charge from the assets of the New Account. Applicants also request that the relief sought herein apply to Future Underwriters.

3. Applicants state that, without the requested relief as to Future Underwriters, a separate application would have to be filed to request and obtain exemptive relief for any Future Underwriter. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that if exemptive relief were to be sought repeatedly with respect to the same issues addressed in this application, investors would not receive additional protection or benefit, and investors and the new applicants could be disadvantaged by increased costs. Applicants argue that the requested relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Transamerica to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would enhance the ability to take effective advantage of business opportunities as such opportunities arise. Applicants submit, for all the reasons stated herein, that their request for relief with respect to Future Underwriters is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represent that the level of the mortality and expense risk charge proposed under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Transamerica's analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts, including such factors as annuity purchase rate guarantees, death benefit guarantees, other contract charges, the administrative services performed by Transamerica with respect to the Contracts, the market for the Contracts, investment options under the Contracts, payment features, and the tax status of the Contracts. Applicants state that Transamerica will maintain a memorandum, available to the Commission upon request, setting forth in detail the products analyzed in the course of, and the methodology and results, of its review.

5. Transamerica does not anticipate that the sales charge deducted under the Contracts has or will generate sufficient revenues to pay the cost of distributing the Contracts. If the sales charge is insufficient to cover Transamerica's expenses, the deficiency will be met from Transamerica's general account. Transamerica acknowledges that the charge for mortality and expense risks may be a source of profit, which would increase the general assets of Transamerica available to pay distribution expenses that Transamerica may bear. Under such circumstances, the charges for mortality and expense risks might be viewed as providing for some of the costs related to the distribution of the Contracts.

6. Applicants state that currently there is no distribution financing arrangement for the Contracts because no new Contracts are being distributed. However, to the extent new Contracts are sold in the future, or the continued receipt of payments under the Contracts is deemed to be a distribution, Transamerica will maintain a memorandum demonstrating its conclusion that there is a reasonable likelihood that such distribution financing arrangement will benefit Contract owners and the New Account.

7. Transamerica's represents that the assets of the New Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by a board of directors, the majority of whom are not ''interested persons'' of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that, for the reasons set forth above, the requested exemption from Section 17(a) of the 1940 Act to permit the Reorganization meets the standards in Section 17(b) of the 1940 Act. In this regard, Applicants

assert that the Reorganization is fair and reasonable, does not involve overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act, and is consistent with the provisions, policies and purposes of the 1940 Act.

Applicants further represent that the requested exemptions from Section 26(a)(2)(C) and 27(c)(2) are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23776 Filed 9–16–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10–5181]

Calista Business Investment Corporation; Notice of Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1991)), Calista Business Investment Corporation, 516 Denali Street, Anchorage, Alaska 99501, incorporated under the laws of the State of Alaska has surrendered its license, No. 10/10–5181 issued by the SBA on March 31, 1983.

Calista Business Investment Corporation has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Calista Business Investment Corporation is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 9, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–23720 Filed 9–16–96; 8:45 am]

BILLING CODE 8025–01–P

[License No. 05/05/–0183]

Threshold Ventures, Inc.; Notice of Surrender of License

Notice is hereby given that, pursuant to Section 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105 (1991)), Threshold Ventures, Inc., 819 Twelve Oaks Center, 15500 Wayzata Boulevard, Wazata, MN 55391, incorporated under the laws of the State of Minnesota has surrendered its license, No. 05/05–0183 issued by the SBA on March 20, 1984.

Threshold Ventures, Inc. has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above-cited Regulation, the license of Threshold Ventures, Inc. is hereby accepted and it is no longer licensed to operate as a Small Business Investment Company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 9, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–23721 Filed 9–16–96; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2443]

Bureau of Economic and Business Affairs; Finding of No Significant Impact: Rio Grande Pipeline Company, Pipeline To Cross the U.S.-Mexico Border at El Paso County, TX

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, connect, operate and maintain a pipeline to transport petroleum products (liquid petroleum gas) across the U.S.-Mexico border.

SUPPLEMENTARY INFORMATION: Rio Grande Pipeline Company has applied for a Presidential Permit to authorize construction, connection, operation and maintenance of a 8.625 inch diameter pipeline to convey liquid petroleum gas (LPG) across the border to Mexico in El Paso County, Texas.

The proposed pipeline will utilize existing pipelines commencing in Hardisty County, Texas. Approximately 30 miles of new pipeline will be constructed commencing in Hudspeth County, Texas, crossing El Paso County, Texas to cross the border south of the town of San Elizario into Mexico.

The pipeline will continue approximately 20 miles into Mexico, with a terminus at the Mendez Terminal in Ciudad Juarez. The pipeline will initially receive an estimated 16,000 barrels per day for transportation with a capacity for approximately 24,000 barrels per day. The pipeline will facilitate LPG exports from the United States to Mexico at an estimated annual value of 60 to 65 million dollars.

Summary

In accordance with the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, The Council on Environmental Quality (CEQ) regulations, 40 CFR Parts 1500–1508, and the Department's regulations for implementation of NEPA (22 CFR Part 161), the Department of State has conducted an environmental assessment of the proposed construction by Rio Grande Pipeline Company of a LPG pipeline across the international boundary in El Paso County south of San Elizario, Texas. The Department of State is charged with the issuance of Presidential Permits authorizing construction of such international pipelines under Executive Order 11423 (1968), as amended by Executive Order 12847 (1993). Several Federal agencies cooperated in preparation of the environmental assessment, reviewing and commenting on the analysis and conclusions presented therein.

Agencies participating in this process together with the Department of State included: the Environmental Protection Agency, the Departments of Defense, Treasury, Interior, Commerce, Transportation, the Attorney General, the Chairman of the Surface Transportation Safety Board, and the Director of the Federal Emergency Management Agency.

Interested parties were invited to comment on the proposed application in a Federal Register Notice number 2397, in the Federal Register Vol. 61, No. 104, pages 26945–26946.

Based on the final environmental assessment, which included a preliminary environmental assessment, comments received from interested agencies and responses to those comments, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the proposed pipeline (as described in the final environmental assessment) will not have a significant effect on the quality of the human environment within the United States. Therefore, in accordance with CEQ's

NEPA regulations, 40 CFR 1501.4 and 1508.13 and with State Department Regulations, 22 CFR 161.8 (c) an environmental impact statement will not be prepared.

Factors Considered

The environmental assessment carefully considered delivery alternatives, truck and rail exports of LPG, as well as alternative pipeline routes. National statistics show that pipelines are safer than rail and many times safer than trucks for transporting liquid petroleum products. LPG exports to Mexico by pipeline are the safer alternative than their shipment by rail or truck, especially in the congested border crossing areas. Delivery of LPG to Mexico by pipeline produces substantially less emissions than does delivery by diesel truck and enhances highway safety. The pipeline route corridor selection is based on the most direct routing, use of existing rights-of-way, avoidance of populated areas, and avoidance of cultural and biological resources. No conflicts with active locatable mineral operations, metallic or non-mettalic, were identified along the proposed pipeline route. Wetlands, including jurisdictional wetlands regulated under the Clean Water Act, will not be affected by the pipeline as all aquatic features will be crossed by boring beneath them. There is no specific habitat for any federally listed Endangered or Threatened species identified in the area. Any disturbances to land, vegetation, wildlife, and socioeconomic resources are expected to be minimal and short-term, arising mainly due to initial pipeline construction.

Further analysis and reasoning supporting the pipeline routing are presented in the original pipeline application. Copies of supporting information for this finding and the final environmental assessment can be obtained from the State Department's office of International Energy and Commodities Policy, 202–647–2875.

Environmental Justice

In addition to the analysis conducted in accordance with NEPA, the Department of State addressed environmental justice considerations pursuant to Executive Order 12898 of February 11, 1994 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''). Based on its examination of environmental justice considerations, the Department has determined that the proposed pipeline will not have disproportionately high and adverse human health or environmental effects on minority and low-income populations. The analysis supporting this determination can be obtained from the State Department Office of International Energy and Commodities Policy, 202–647–2887.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Susan Phillips, Office of International Energy and Commodities Policy, Room 3529, U..S. Department of State, Washington, DC, 20520, (202) 647–2887.

Dated: August 22, 1996.

Herbert Yarvin,

Acting Director, International Energy and Commodities Policy.

[FR Doc. 96–23937 Filed 9–16–96; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2442]

Bureau of Economic and Business Affairs; Finding of No Significant Impact: Express Pipeline To Cross the U.S.-Canadian Border From Alberta to Montana

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, connect, operate and maintain a pipeline to transport petroleum across the Canada-U.S. border.

SUPPLEMENTARY INFORMATION: Express Pipeline Partnership has applied for a Presidential Permit to authorize construction, connection, operation and maintenance of a crude oil pipeline that would originate at a terminal near Hardisty, Alberta, Canada and cross the international boundary near Simpson, Montana.

Express Pipeline, Inc (Express), an affiliate of Alberta Energy Company Ltd., and TransCanada PipeLines Limited, proposes to construct, operate, and maintain a 24 inch pipeline from Wild Horse (located on the border between Montana and Canada) to Casper, Wyoming.

The pipeline would transport crude oil from the production fields in Alberta, Canada to refineries in Wyoming, Colorado, Utah, Kansas, Oklahoma, Illinois, Indiana, Ohio, Kentucky and Tennessee via the existing pipelines downstream of Casper. Initially, the pipeline would be capable of transporting 172,000 barrels of crude oil per day between Hardisty and Casper. With additional pump stations, the capacity could ultimately increase to 280,000 b/d.

Summary

In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508, and the State Department Regulations for Implementation of NEPA, 22 CFR Part 161, the Department of State has prepared an Environmental Assessment of the proposed Express Pipeline permit. In our Environmental Assessment (EA), the State Department proposes to incorporate by reference a final Environmental Impact Statement prepared by the U.S. Department of Interior, Bureau of Land Management for the proposed pipeline in February 1996. The State Department's EA also includes supplemental information requested by the Department to review the additional reasonably foreseeable cumulative impacts from the connection of Express to the existing Platte pipeline or other pipelines, and in particular, any anticipated construction or modifications as a result of the acquisitions and/or connection of such pipelines.

The Department of State is charged with the issuance of Presidential Permits authorizing construction of such international pipelines under Executive Order 11423 (1968), as amended by Executive Order 12847 (1993). Several federal agencies cooperated in preparation of the Environmental Assessment, reviewing and commenting on the analysis and conclusions presented therein.

Interested parties were invited to comment on the proposed application in a Federal Register Notice number 2416, in the Federal Register Vol. 61, 37787, July 19, 1996.

Based on the final environmental assessment, which incorporated the final Environmental Impact Statement prepared by the U.S. Department of Interior, supplemental information on the cumulative impact of the proposed pipeline and comments received from interested agencies and responses to those comments, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the proposed pipeline (as described in the permittee's application of May 3, 1996) will not have a significant effect on the quality of the human environment within the United States. Therefore, in accordance with CEQ's NEPA regulations, 40 CFR 1501.4 and 1508.13 and with State Department Regulations, 22 CFR 161.8(c), an environmental impact statement will not be prepared.

Factors Considered

The environmental assessment carefully considered a wide variety of factors including, but not limited to: the physical environment, consisting of geology, soils, hydrology, air quality and noise; the biological environment including vegetation, wildlife, fisheries, and threatened, endangered, or sensitive species; the social environments consisting of land-use, recreation, visual resources, and cultural resources. The environmental assessment also considered the project purpose, alternatives, environmental consequences, cumulative impacts and other related information.

Environmental Justice

In addition to the analysis conducted in accordance with NEPA, the Department of State addressed environmental justice considerations pursuant to Executive Order 12898 of February 11, 1994 (''Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations''). Based on its examination of environmental justice considerations, the Department has determined that the proposed pipeline will not have disproportionately high and adverse human health or environmental effects on minority and low-income populations. The analysis supporting this determination can be obtained from the State Department Office of International Energy and Commodities Policy, 202–647–2887.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION, CONTACT: Susan Phillips, Office of International Energy and Commodities Policy, Room 3529, U.S. Department of State, Washington, DC, 20520, (202) 647–2887.

Dated: August 29, 1996.

Herbert Yarvin,

Director, International Energy and Commodities Policy.

[FR Doc. 96–23938 Filed 9–16–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending September 6, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1677.
Date filed: September 5, 1996.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/392 dated August 8, 1996; FINALLY ADOPTED RESOS R1–22; minutes—PAC/Meet/142 dated August 8, 1996; Intended effective date: October 1, 1996.

Docket Number: OST–96–1678.
Date filed: September 5, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN-EUR 0002 dated August 13, 1996; Canada-Europe Resos r1–30; minutes—PTC12 CAN–EUR 0004 dated September 3, 1996; Intended effective date: January 1, 1997.

Docket Number: OST–96–1682.
Date filed: September 6, 1996.
Parties: Members of the International Air Transport Association.
Subject: Request for Interim Approval of Amendments to the Provisions for the Conduct of IATA Traffic Conferences Pursuant to Sections 41308 and 41309 of Title 49 of the United States Code and Parts 303.03, 303.05 and 303.30(c) of Title 14 of the Code of Federal Regulations, it is hereby requested on behalf of member airlines of the International Air Transport Association (IATA) that the Department approve and confer antitrust immunity on five amendments to the Provisions for the Conduct of IATA Traffic Conferences (the Provisions).

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–23774 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 6, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1676.
Date filed: September 4, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 2, 1996.
Description: Application of Jim Air, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requests authority to engage in interstate scheduled air transportation of persons, property, and mail: Between any point in any state in the United States or District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–23773 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–96–45]

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.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 7, 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, DC 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, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Marisa Mullen (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

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, DC, on September 12, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 28649.

Petitioner: Motores Rolls-Royce Limitada (Motores Rolls-Royce).

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought: To permit Motores Rolls-Royce, a FAA-certified repair station (No. AW5Y742M), to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, for calibration standards of the U.S. National Institute of Standards and Technology (NIST) to test its inspection and test equipment.

Docket No: 28650.

Petitioner: University of North Dakota (UND Aerospace).

Sections of the FAR Affected: 14 CFR 141.15.

Description of Relief Sought: To permit UND Aerospace to operate FAA-approved part 141 pilot school satellite bases located outside the United States to provide FAA-approved part 141 flight and ground training courses to U.S. citizens and non-U.S. citizens.

Docket No: 28663.

Petitioner: Goodyear do Brasil Produtos de Borracha Ltda. (Goodyear).

Sections of the FAR Affected: 14 CFR 145.47(b).

Description of Relief Sought: To allow Goodyear to obtain its calibration standards for inspection and test equipment used on aircraft tires from the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial (INMETRO), Brazil's national standards organization, in lieu of the U.S. National Institute of Standards and Technology (NIST).

[FR Doc. 96–23803 Filed 9–16–96; 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 Minot International Airport, Minot, ND

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 Minot International 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 October 17, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ryan, Airport Director, of the City of Minot, North Dakota at the following address: Minot International Airport, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. 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 Minot International 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 July 29, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota 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 29, 1996.

The following is a brief overview of the application.

PFC application number: 96–02–C–00–MOT

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1997.

Proposed charge expiration date: September 30, 1998.

Total estimated PFC revenue: $309,677.00.

Brief description of proposed project(s):

Impose and Use: PFC Amendment and Use Application; Acquire Additional Land Adjacent to Runway 13–31 and Install Security Fencing; Rehabilitate Taxiway A and C; Perimeter Fencing North and Northeast Sides; Environmental Assessment for 8–26.

Use: Acquire Land Adjacent to Runway 13–31; Perimeter Fencing East & South Side.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Those carriers which enplane less than one percent of all enplanements.

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 City of Minot—Airport Directors offices at the Minot International Airport.

Issued in Des Plaines, Illinois on September 10, 1996.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–23812 Filed 9–16–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 33075]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant trackage rights to CSX Transportation, Inc. (CSXT), over approximately 10.5 miles of rail

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

lines CSXT owns and currently leases to NS, which extends from the western end of the Middlesboro Yard, in Middlesboro, KY, between milepost CV–215 and milepost CV–217, and includes two related branches, the Bennett's Fork Branch between milepost MR–216.1 near Queensbury, KY, and milepost MR–221 near Motch, KY, and the Stony Fork Branch between milepost MS–219 at Stony Fork Junction, KY, and milepost MS–221 near Pioneer, KY, including one mile of track leased to Bell County Coal Corporation.[2] The trackage rights were to become effective on or after September 5, 1996.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33075, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: John W. Humes, Jr., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: September 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23779 Filed 9–16–96; 8:45 am]

BILLING CODE 4915–00–P

[2] NS is granting trackage rights over the same rail lines CSXT leases to NS except for the trackage between milepost CV–217 and milepost CV–219.5 in the vicinity of the Middlesboro Yard, which CSXT does not require for its operations. *See Norfolk Southern Railway Company—Lease Exemption—CSX Transportation, Inc.,* STB Finance Docket No. 32923 (STB served Aug. 6, 1996).

[STB Finance Docket No. 32982; Finance Docket No. 32657]

Notice of Exemptions

In the Matter of: Iron Road Railways Incorporated, Benjamin F. Collins, John F. DePodesta, Daniel Sabin, and Robert T. Schmidt—Control Exemption—Bangor and Aroostook Railroad Company, Canadian American Railroad Company, Iowa Northern Railway Company, and The Northern Vermont Railroad Company Incorporated and Iron Road Railways Incorporated and Bangor and Aroostook Acquisition Corporation—Control Exemption—Bangor and Aroostook Railroad Company and Canadian American Railroad Company.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemptions.

SUMMARY: The Board: (1) reopens Finance Docket No. 32657 and grants an exemption allowing control by Benjamin F. Collins, John F. DePodesta, Daniel Sabin, and Robert T. Schmidt (Individual Petitioners) of the Bangor and Aroostook Railroad Company, Canadian American Railroad Company, and Iowa Northern Railway Company; and (2) grants an exemption in STB Finance Docket No. 32982 for the Individual Petitioners' and Iron Road Railways Incorporated's continuance in control of The Northern Vermont Railroad Company Incorporated (NV), upon NV's becoming a Class III rail carrier, subject to labor protective conditions. NV filed a notice of exemption in STB Finance Docket No. 32981 to acquire from Canadian Pacific Limited, doing business as CP Rail System, approximately 86.41 miles of rail line located in Franklin, Orleans, Caledonia, and Orange Counties, VT.[2] Consummation of that transaction is contingent upon our exemption of the continuance in control transaction.

DATES: These exemptions will be effective on September 27, 1996. Petitions to stay must be filed September 23, 1996. Petitions to reopen must be filed by October 7, 1996.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 32982 and/or Finance Docket No. 32657 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) David A. Hirsh, Harkins Cunningham, Suite 600, 1300 19th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721].

Decided: September 12, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23856 Filed 9–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and 11323–27.

[2] The notice of exemption was filed on June 7, 1996, and was scheduled to become effective 7 days later.

[STB Docket No. AB–167 (Sub-No. 1165X)]

Consolidated Rail Corporation—Abandonment Exemption— in St. Joseph County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.0±-mile portion of its line of railroad known as the Plymouth Industrial Track between railroad milepost 179.00± and railroad milepost 181.00+ in St. Joseph, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—*

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by September 27, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 20, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 9, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23777 Filed 9–16–96; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[STB Docket No. AB–167 (Sub-No. 1167X)]

Consolidated Rail Corporation—Abandonment Exemption—in Marion County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.55-mile portion of its line of railroad known as the Arlington Avenue Industrial Track between railroad milepost -0.90± and railroad milepost 0.65± in Marion County, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by September 27, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street - 16A, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by September 20, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days fter the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 9, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23778 Filed 9–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Corrections

Federal Register

Vol. 61, No. 181

Tuesday, September 17, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEFENSE OF DEFENSE

48 CFR Part 219

[DFARS Case 96-D304]

Defense Federal Acquisition Regulation Supplement; Comperhensive Subcontracting Plans

Correction

In rule document 96–19413 beginning on page 39900 in the issue of Wednesday, July 31, 1996, make the following correction:

219.702 [Corrected]

On page 39900, in the third column, in the heading of section 219.702, remove ''and''.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Management and Budget

Correction

In notice document 96–21360 beginning on page 43363 in the issue of Thursday, August 22, 1996 make the following correction:

On page 43365, in the third column, above the signature ''John J. Callahan'', ''Dated: August 24, 1996'' should read ''Dated: July 24, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

RIN 1004-AC90

Alaska Occupany and Use; Alaska Homestead Settlement

Correction

Final Rule document 96-22704 was inadvertently published in the Proposed Rules section of the issue of Tuesday, September 10, 1996, beginning on page 47724. It should have appeared in the Rules and Regulations section.

BILLING CODE 1505–01–D

federal register

Tuesday
September 17, 1996

Part II

Securities and Exchange Commission

17 CFR Part 200, et al.

Registered and Certain Open-End Management Investment Companies; Final Rules

17 CFR Part 270

Multiple Class and Series Investment Companies; Rule Amendment; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 239 and 270

[Release No. IC–22201; File No. S7–2–96]

RIN 3235–AG59

Technical Amendments to Rule Relating to Payments for the Distribution of Shares by a Registered Open-End Management Investment Company

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a technical amendment to the rule under the Investment Company Act of 1940 that governs the use of assets of registered open-end management investment companies (''funds'') to pay for the distribution of fund shares. The amendment provides that a plan to use fund assets to pay for the distribution of fund shares adopted prior to a fund's initial public offering does not have to be approved by shareholders. Because the fund's directors must approve the plan, and investors that buy their shares in the fund's public offering, in effect, ''vote with their dollars'' to accept the plan, shareholder approval of the plan prior to the fund's public offering is not necessary.

EFFECTIVE DATE: The rule amendments will become effective October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Marilyn K. Mann, Senior Counsel, or Kenneth J. Berman, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Mail Stop 10–2, Washington, DC 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 10–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting a technical amendment to rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''). The Commission also is making technical corrections to rule 30–5 [17 CFR 200.30–5] and Form N–14 [17 CFR 239.23].

I. Discussion

The Commission is adopting a technical amendment to rule 12b–1 under the Investment Company Act, which governs the use of fund assets to pay for the distribution of fund shares.[1] The amendment provides that a plan to use fund assets to pay for the distribution of fund shares (a ''rule 12b–1 plan'') adopted prior to a fund's initial public offering does not have to be approved by the fund's shareholders. The Commission received four comments in response to the proposal, all supporting the amendment.[2]

Shareholder approval of a rule 12b–1 plan is unnecessary when the plan is adopted prior to a fund's initial public offering. Under these circumstances, the shareholders voting typically are comprised of persons involved in organizing the fund (*i.e.*, the fund's investment adviser or its affiliates). Shareholder approval, therefore, is virtually automatic, mechanical, and offers no significant protection to the fund's shareholders. Rule 12b–1 requires a rule 12b–1 plan to be approved by a majority of the fund's board of directors, including a majority of the independent directors, prior to the plan's implementation.[3] In addition, investors purchasing shares in a fund's initial public offering, in effect, ''vote with their dollars'' to accept the fund's rule 12b–1 plan since the terms of the plan, and its effects on fund expenses, are disclosed in the fund's prospectus.[4]

The amended rule requires shareholder approval of a rule 12b–1 plan that is adopted after a fund's initial public offering. Shareholder approval also is required for a rule 12b–1 plan adopted prior to a public offering when fund shares have been sold to persons other than those involved in organizing the fund.[5] Two commenters requested the Commission to clarify how the amended rule would apply to a newly created series or class of shares of an existing fund.[6] The commenters suggested that a series or class that had not been publicly offered should be treated in the same manner as a fund that had not been publicly offered. The Commission agrees. If an existing fund that already offers its shares to the public adds a new series or class subject to a rule 12b–1 plan, approval of the plan by shareholders of the new series or class is not required prior to any public offering of the shares of that series or class. This interpretation is consistent with the approach that the Commission has taken with respect to series funds.[7] In addition, rule 12b–1 specifically provides that a plan that covers more than one class of shares must be severable for each class, and that whenever action is required to be taken with respect to a class, that action must be taken separately for each class.[8]

II. Technical Corrections

The Commission is making a technical correction to paragraph (a)(8)(ii)(B) of rule 30–5, Delegation of Authority to Director of Division of Investment Management.[9] That paragraph currently contains a reference to paragraphs (a)(9)(i) (A) and (C) of rule 30–5. There are no such paragraphs in the rule. The reference instead should be to paragraphs (a)(8)(i) (A) and (C) of

[1] The Commission proposed this amendment on January 5, 1996. Distribution of Shares by Registered Open-End Management Investment Company, Investment Company Act Release No. 21660 (Jan. 5, 1996) [61 FR 1313 (Jan. 19, 1996)] [hereinafter Proposing Release].

[2] The commenters were the Subcommittee on Investment Companies and Investment Advisers, Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association; the Investment Company Institute; Bank One Corporation; and Capital Research and Management Company.

[3] Rule 12b–1(b)(2) [17 CFR 270.12b–1(b)(2)]. The fund's board also must approve the continuation of the plan at least annually. Rule 12b–1(b)(3)(i) [17 CFR 270.12b–1(b)(3)(i)].

[4] Items 2 and 7 of Form N–1A under the Securities Act of 1933 and the Investment Company Act [17 CFR 239.15A and 274.11A]. In addition, rule 12b–1 requires fund shareholders to approve any changes in the rule 12b–1 plan that would materially increase the amount of the asset-based sales load and gives shareholders the right to terminate the plan at any time. Rule 12b–1(b)(3)(iii) and (4) [17 CFR 270.12b–1(b)(3)(iii) and (4)].

[5] This provision addresses funds that adopt a rule 12b–1 plan following the sale of shares to persons other than affiliates of *the fund or its promoter* without engaging in a public offering. The proposed amendment referred only to affiliates of the fund and their affiliated persons. *See* Proposing Release, *supra* note 1, at n.6. Consistent with the intent of the amendment and a commenter's recommendation, the adopted amendment also refers to the fund's promoter and its affiliated persons. *See* Section 2(a)(30) of the Investment Company Act [15 U.S.C. 80a–2(a)(30)] (defining promoter as a person who, alone or acting in concert, initiates or directs the organization of a fund).

[6] Funds often organize themselves as series funds and offer investors an opportunity to invest in one or more ''portfolios'' each of which has a specific investment objective. The fund will offer a series of shares that represents an interest in the portfolio in which the investor desires to participate. A fund, or a portfolio of a fund, also may offer different classes of shares that have different distribution and shareholder service arrangements. *See* rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3].

[7] *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 15, 1993) [58 FR 68074 (Dec. 23, 1993)] at n.53 (rule 12b–1 has been interpreted to treat each series of a fund as a separate fund). *See* also rule 18f–2 under the Investment Company Act [17 CFR 270.18f–2] (requiring the shareholders of the series affected by the matter to vote on that matter); Item 22 of Schedule 14A under the Securities Exchange Act of 1934 [17 CFR 240.14a–101] (defining a fund for purposes of the Commission's proxy rules as a registrant or a separate *series* of a registrant).

[8] Rule 12b–1(g) [17 CFR 270.12b–1(g)].

[9] 17 CFR 200.30–5(a)(8)(ii)(B).

rule 30–5. The Commission also is making a technical correction to Item 16(10) of Form N–14.[10] The last clause of Item 16(10) currently includes the phrase ''a meeting of the minutes.'' That phrase should be ''the minutes of the meeting.''

III. Cost/Benefit Analysis

The amendment provides that a rule 12b–1 plan adopted prior to a fund's initial public offering does not have to be approved by shareholders. Shareholder approval in these circumstances is unnecessary since the fund's board of directors must approve the rule 12b–1 plan, and investors participating in the fund's initial public offering effectively ''vote with their dollars'' to accept the plan. Under the amended rule, funds are no longer required to undergo the perfunctory exercise of obtaining approval from persons who have supplied the fund with its initial capital prior to the fund's initial public offering.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission certified, at the time that the proposed technical amendment to rule 12b–1 was published for public comment, that the amendment would not, if adopted, have a significant economic impact on a substantial number of small entities. No comments were received regarding the certification. The amendment enables funds, including small entities, to forgo the minimal time and expense associated with obtaining shareholder approval of rule 12b–1 plans from persons who have supplied the fund with its initial capital prior to the fund's initial public offering.

V. Statutory Authority

The Commission is amending rule 12b–1 pursuant to the authority set forth in sections 12(b) and 38(a) of the Investment Company Act [15 U.S.C. 12(b), 37(a)]. The Commission is making technical corrections to rule 30–5 pursuant to section 4A of the Securities Exchange Act of 1934 [15 U.S.C. 78d–1] (''Exchange Act''), and Form N–14 pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77f, 77h, 77j and 77s(a)] and sections 14(a), 14(c) and 23(a) of the Exchange Act [15 U.S.C. 78n(a), 78n(c) and 78w].

[10] 17 CFR 239.23.

List of Subjects in 17 CFR Parts 200, 239 and 270

Authority delegations (Government agencies), Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–5 is amended in paragraph (a)(8)(ii)(B) by removing the cite ''(a)(9)(i) (A) and (C)'' and adding ''(a)(8)(i) (A) and (C)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

4. Form N–14 [referenced in 17 CFR 239.23] is amended in the last clause of Item 16(10) by removing the phrase ''a meeting of the minutes'' and adding in its place ''the minutes of the meeting''.

Note: Form N–14 does not, and the amendment to Form N–14 will not, appear in the Code of Federal Regulations.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

6. Section 270.12b–1 is amended by revising paragraph (b)(1) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(b) * * *

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the company, or affiliated persons of such promoters;

* * * * *

By the Commission.

Dated: September 9, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23439 Filed 9–16–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7328; IC–22202; File No. S7–8–95]

RIN 3235–AD18

Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits contingent deferred sales loads to be imposed on the shares of certain registered open-end management investment companies (''mutual funds'' or ''funds''). The Commission also is adopting amendments to the registration form for mutual funds, and publishing a staff guide to the registration form. The rule amendments allow mutual funds to offer investors a wider variety of deferred sales loads, including installment loads, and eliminate certain requirements in the rule. The form amendments modify the requirements for disclosing deferred sales loads in mutual fund prospectuses to reflect the changes made by the rule amendments.

EFFECTIVE DATE: The rule and form amendments will become effective October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Nadya B. Roytblat, Assistant Chief, or Kenneth J. Berman, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–2, Washington, D.C. 20549. Requests for formal interpretive advice should be directed to the Office of Chief Counsel at (202) 942–0659,

Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 6c-10 [17 CFR 270.6c-10] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or the ''Act''), and to Form N–1A [17 CFR 239.15A, 274.11A] under the Securities Act of 1933 [15 U.S.C. 77a-77aa] (the ''Securities Act'') and the Investment Company Act. The Commission also is adopting a conforming amendment to rule 11a-3 [17 CFR 270.11a-3] under the Investment Company Act.

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I. Executive Summary

The Commission is adopting amendments to rule 6c–10 under the Investment Company Act to remove certain restrictions on the types of deferred sales loads that may be imposed on the shares of mutual funds. Rule 6c–10 currently permits only contingent deferred sales loads (''CDSLs''). A CDSL is paid at redemption, but declines to zero if the shares are held for a certain period of time. The amendments allow sales charges paid upon redemption (''back-end loads'') that differ from CDSLs (*e.g.*, sales loads that do not decline to zero) as well as loads paid after purchase during the term of a shareholder's investment in a fund, for example, in installments (''installment loads''). These new types of deferred sales loads would be alternatives to existing load structures.

II. Background

The Commission is adopting amendments to rule 6c–10 under the Investment Company Act, the rule that permits CDSLs to be imposed on mutual fund shares. The amendments allow funds to offer other types of deferred sales loads that may provide desirable flexibility for both investors and funds.

Rule 6c–10 was adopted in February, 1995.[1] The rule essentially codified the conditions in the nearly 300 exemptive orders permitting CDSLs that had been issued by the Commission since 1981. A CDSL is paid at redemption, but declines to zero if the shares are held for a certain period of time. CDSLs typically are imposed in combination with an asset-based distribution fee charged in accordance with rule 12b–1 under the Act (''rule 12b–1 fee''),[2] an arrangement commonly called a ''spread load.''

Contemporaneously with the adoption of rule 6c–10, the Commission proposed amendments designed to allow greater flexibility in the types of deferred sales load structures offered to investors, including loads payable in installments.[3] The Commission also proposed changes to the prospectus disclosure requirements for deferred loads to complement the proposed changes to rule 6c–10.

The Commission received letters from three commenters, all of which strongly supported the proposed amendments.[4] In addition, when rule 6c–10 was initially proposed in 1988 to allow various types of deferred sales charges, the Commission received 33 comments, including 19 comments from individual investors.[5] Both in 1988 and in response to the proposed amendments, commenters indicated that flexibility in deferred load structures would be desirable for both funds and investors. Individual investors commenting on the 1988 proposal in particular supported installment loads as an option in paying a sales charge.[6] Some investors, for example, compared installment loads to front-end loads and preferred the former as allowing them to defer the payment of a sales charge; others compared installment loads to rule 12b–1 fees, and believed that installment loads represent a more precise charge, as well as one that would be payable within a more definite term.[7] The Commission is adopting the amendments to rule 6c–10, and modifying the prospectus disclosure requirements to reflect these comments as well as its continued study of deferred sales charges.

III. Discussion of Amendments to Rule 6c–10

The amendments to rule 6c–10 allow back-end sales loads other than CDSLs, as well as loads payable during the term of a shareholder's investment in a fund, such as in installments. The amendments remove certain requirements in the rule regarding the way in which a load must be calculated, as well as the current prohibition on imposing deferred sales loads on shares purchased through reinvested dividends and other distributions. The terms of any deferred sales load, however, must be covered by the NASD Sales Charge Rule.[8]

A. Scope of the Amended Rule

The rule as amended defines a deferred sales load as any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.[9] The definition includes CDSLs as well as loads paid at redemption whose amount may remain the same or change over time in a manner different from a CDSL, for

[1] Exemption for Certain Open-End Management Investment Companies to Impose Contingent Deferred Sales Loads, Investment Company Act Release No. 20916 (Feb. 23, 1995) [60 FR 11887 (Mar. 2, 1995)].

[2] 17 CFR 270.12b–1.

[3] Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 20917 (Feb. 23, 1995) [60 FR 11890 (Mar. 2, 1995)] [hereinafter Proposing Release].

[4] The commenters were the American Bar Association Subcommittee on Investment Companies and Investment Advisers, the law firm of Davis Polk & Wardwell, and the Investment Company Institute (''ICI'').

[5] Exemptions for Certain Registered Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 16619 (Nov. 2, 1988) [53 FR 45275 (Nov. 19, 1988)].

[6] All but one of 19 letters from individual investors favored installment loads.

[7] Industry commenters also suggested that installment loads would offer greater certainty than CDSLs and spread load structures, thereby making it easier for certain mutual fund sponsors to obtain financing for their distribution expenses.

[8] The NASD Sales Charge Rule prohibits NASD members from offering or selling shares of a mutual fund if the sales charges described in the fund's prospectus are excessive. Aggregate sales charges are deemed excessive under the Rule if they do not conform to the specific provisions set forth in the Rule. NASD Conduct Rules, Rule 2830(d) (1) and (2).

[9] Paragraph (b)(3) of rule 6c–10 as amended. The rule is not applicable to certain charges that may be imposed by a mutual fund to compensate the fund for the cost of redeeming shares and that are paid directly to the fund. *See, e.g.*, rule 11a–3 under the Act [17 CFR 270.11a–3(a)(7)] (defining a ''redemption fee''). The Commission staff has taken the position that these charges may be imposed without the need for exemptive relief under the Act. *See, e.g.*, John P. Reilly & Associates (*pub. avail.* July 12, 1979).

example, not decline to zero. The definition also includes loads paid after purchase during the term of a shareholder's investment in a fund, such as in one or more installments that may (or may not) be accelerated upon early redemption.[10]

Rule 6c–10 does not apply to insurance company separate accounts, which are permitted to deduct deferred loads under an existing rule,[11] or unit investment trusts (''UITs''). While commenters generally supported extending the rule to UITs, they identified issues related to disclosure, the method for calculating deferred sales loads and the interplay of rules 6c–10 and 11a–3 (the Investment Company Act rule governing exchanges of fund shares)[12] that are unique to UITs. The Commission will continue to study these issues, consider applications for exemptive orders[13] and, if appropriate, propose amendments that would extend rule 6c–10 to UITs.

B. Deferred Load Calculation

Rule 6c–10 currently contains two requirements relating to the calculation of CDSLs. Under the first requirement, a CDSL must be based on the *lesser of* the NAV of the shares at the time of purchase or the NAV at the time of redemption.[14] Under the second requirement, in a partial redemption, the CDSL must be calculated by treating as redeemed, *first* shares not subject to a load, and *second* other shares as if redeemed in the order they were purchased.[15]

The Commission is eliminating both of these requirements and deferring to the NASD to address these matters in its Sales Charge Rule. The Commission is, however, limiting the amount of a deferred sales load to an amount not to exceed a specified percentage of the NAV of the fund's shares at the time of purchase.[16] The effect of this provision would be to require that investors be given the benefit, if any, of deferring the load payment should there be an increase in the shares' NAV.

The Commission had proposed allowing a deferred load also to be based on the *higher of* the NAV at the time of purchase or at the time the load is paid.[17] None of the commenters specifically addressed the *higher of* standard. Upon reconsideration of the issue, the Commission believes that allowing the *higher* of standard would be inconsistent with the intent of the proposal and the approach the Commission has taken to deferred loads generally.[18] Allowing the *higher of* standard would leave investors uncertain about the amount of the deferred load they would pay and significantly reduce their ability to compare the amounts they would pay under different load structures.

Rule 6c–10, as amended, permits any deferred load in the amount not greater than a specified percentage of the NAV at the time of purchase.[19] This approach is consistent with existing deferred load structures, and will permit deferred loads to be charged on the same basis as front-end loads. This approach also will assure that investors receive the benefit of any growth in the NAV subsequent to purchasing the shares,[20] and facilitate investor comparisons of sales load structures. Unlike the current requirements, whereby fund underwriters bear the risk of a decrease in NAV (because the amount of the deferred load is based on the lesser of the NAV at the time of purchase or redemption), amended rule 6c–10 will permit fund underwriters to receive the amount they would have received had the sales load been charged at the time of purchase.

The amended rule does not require any particular method of collecting installment loads. Installment load payments could be collected, for example, out of distributions, by automatic redemptions, or through separate billing of an investor's account. Different methods of collecting installment load payments could result in different tax consequences for investors.[21] The method used, and any material tax consequences of such method, must be described in the fund's prospectus.[22]

C. Deferred Loads on Reinvested Distributions

Rule 6c–10 currently prohibits CDSLs to be imposed on shares purchased through the reinvestment of dividends or capital gains distributions.[23] The Commission proposed to delete this prohibition from the rule. The Commission reasoned, and the commenters agreed, that this prohibition is unnecessary so long as a fund appropriately discloses the manner in which loads are assessed and so long as mutual fund sales loads are subject to the limits in the NASD Sales Charge Rule. The prohibition has been deleted from the rule as amended.

The NASD Sales Charge Rule currently does not cover deferred loads on reinvested dividends, nor loads on reinvested capital gains distributions or

[10] The NASD Sales Charge Rule currently governs only deferred loads ''deducted from the proceeds of the redemption of shares by an investor.'' NASD Conduct Rules, Rule 2830(b)(8)(B). A deferred load paid other than upon redemption (*e.g.,* an installment load) would fall outside the current definition and would not be covered by the Rule. Therefore, such a load could not be imposed until the NASD Sales Charge Rule is amended to cover it. The Commission staff has requested the NASD to review its Sales Charge Rule in light of the amendments to rule 6c–10.

[11] Rule 6c–8 under the Act [17 CFR 270.6c–8].

[12] 17 CFR 270.11a–3.

[13] *See, e.g.,* Merrill Lynch, Pierce, Fenner & Smith, Inc., Investment Company Act Release Nos. 13801 (Feb. 29, 1984) [49 FR 8512 (Mar. 7, 1984)] (Notice of Application) and 13848 (Mar. 27, 1984) [30 SEC Docket 192] (Order), and 15120 (May 29, 1986) [51 FR 20389 (June 4, 1986)] (Notice of Application) and 15167 (June 24, 1986) [35 SEC Docket 1735] (Order); PaineWebber, Inc., Investment Company Act Release Nos. 20755 (Dec. 6, 1994) [59 FR 64003 (Dec. 12, 1994)] (Notice of Application) and 20819 (Jan. 4, 1995) [58 SEC Docket 1504] (Order) (allowing UITs to impose deferred sales loads payable in installments).

[14] Rule 6c–10(a)(1) [17 CFR 270.6c–10(a)(1)].

[15] Rule 6c–10(a)(3) [17 CFR 270.6c–10(a)(3)].

[16] The deferred load amount will be specified by the fund in its prospectus. *See infra* section IV.A.

[17] For example, if a shareholder makes a $1000 investment that subsequently increases in value to $2,000 by the time the shareholder redeems his shares, a 3% deferred load based on the *higher of* standard would result in the shareholder paying a $60 deferred load (3% of $2,000), which is 6% of the initial $1,000 investment.

[18] *See, e.g.,* Exemptive Relief for Separate Accounts to Impose A Deferred Sales Load on Variable Annuity Contracts Participating in Such Accounts and to Deduct from Such Contracts in Certain Instances an Annual Fee for Administrative Services That is Not Prorated, Investment Company Act Release No. 13048 (Feb. 28, 1983) [48 FR 9532, 9534 (Mar. 7, 1983)] (adopting rule 6c–8 and noting that a deferred load is intended to reimburse the same expenses as a front-end load).

[19] Paragraph (a)(1) of rule 6c–10 as amended. The requirement that the deferred load amount not exceed a ''specified percentage'' of the NAV at the time of purchase does not mean that the load may not be based on a percentage of the NAV at the time the load is paid, even if the NAV at the time the load is paid is greater than the NAV at the time of purchase. The total amount of the load paid by an investor, however, could not exceed the amount represented by the specified percentage of the shares' offering price. Thus, if the final installment of an installment load would result in the investor paying more than the amount permitted by the rule, the amount of the final installment would have to be reduced accordingly.

[20] Industry representatives have suggested that the principal benefit of a deferred sales load is that it allows all of an investor's funds to ''go to work'' immediately rather than being deducted to pay sales charges. If the deferred sales load is based on the NAV at the time of payment, and the NAV has increased because of investment gains, any benefit that would have inured to the investor as a result of deferring the load payment would be collected by the fund's distributor when the load is paid.

[21] Commenters have pointed out, for example, that payment through automatic redemptions would mean that a shareholder might incur a capital gain or loss on each such redemption; if additional shares then were purchased by the shareholder within 30 days of the automatic redemption, any capital loss might be disallowed under the ''wash sale'' rule contained in the Internal Revenue Code. *See, e.g.,* Letter from the ICI to Jonathan G. Katz, Secretary, SEC (Jan. 9, 1989), File No. S7–8–95.

[22] *See infra* section IV.A.

[23] Rule 6c–10(a)(2) [17 CFR 270.6c–10(a)(2)].

returns of capital.[24] Under amended rule 6c–10, therefore, deferred loads may not be imposed on shares purchased with reinvested distributions unless and until the NASD amends its Sales Charge Rule to address this issue. Should the NASD Sales Charge Rule be so amended, the prospectus disclosure requirements will require deferred sales charges on shares purchased with reinvested dividends and other distributions to be disclosed in fund prospectuses.[25]

D. ''No-Load'' Labeling

The NASD Sales Charge Rule expressly prohibits NASD members and their associated persons from describing a mutual fund as ''no load'' or as having ''no sales charge'' if the fund imposes a front-end load, a back-end load, or a rule 12b–1 and/or service fee that exceeds .25% of average net assets per year.[26] When adopting rule 6c–10, the Commission concluded that it was unnecessary to retain the provision in the proposed rule which contained a similar ''no-load'' labeling prohibition for a fund whose shares are subject to a CDSL. The prohibition similarly is unnecessary for funds whose shares are subject to deferred loads other than CDSLs under today's amendments to rule 6c–10. If the NASD amends its Sales Charge Rule to permit installment loads, the Commission anticipates that the NASD would address the applicability of its ''no-load'' labeling policy to funds whose shares are subject to such loads. The Commission reiterates that it would be misleading and a violation of the federal securities laws for a mutual fund whose shares are subject to a deferred sales load to be held out to the public as a no-load fund.[27]

E. Rule 11a–3

The Commission requested comment whether the definition of deferred sales load in rule 11a–3 under the Investment Company Act, governing exchanges of fund shares, should be amended to correspond expressly with the proposed definition in rule 6c–10. Commenters favored amending the definition in rule 11a–3 to avoid any confusion over the interaction of rules 6c–10 and 11a–3. The Commission is adopting the conforming amendment.[28]

IV. Discussion of Revised Disclosure Requirements

The Commission is tailoring the prospectus disclosure requirements applicable to deferred sales loads in light of the changes to rule 6c–10 discussed above. These modifications relate to the disclosure of deferred sales loads in the fee table and the example in the front of fund prospectuses. The modifications also relate to the general prospectus disclosure about the deferred load calculation and payment. Finally, the amendments address the manner in which deferred sales loads are required to be reflected in calculations of fund performance data.

A. Changes to the Fee Table and the Example

The front part of every mutual fund prospectus is required to contain a fee table—a tabular presentation of the transactional expenses paid by an investor, such as sales loads, and the annual fund operating expenses, such as management and any rule 12b–1 fees. The fee table is followed by an example that sets forth the cumulative amount of various fund expenses over one, three, five and ten year periods based on a hypothetical investment of $1000 and an annual 5% return (''Example''). The Example was intended to provide a relatively straight-forward means for investors to compare the expense levels of funds with different fee structures over varying time periods.

The fee table requirements in Item 2 of Form N–1A, among other things, currently require a line showing the maximum sales load imposed on purchases (*i.e.*, a front-end load) and a separate line showing any deferred sales load based on the purchase price or redemption proceeds. The fee table currently does not contemplate deferred loads payable other than upon redemption (*e.g.*, in installments) and based on a share price or NAV other than that at purchase or redemption (*i.e.*, at the time an installment is paid). Similarly, Instructions to the Example currently refer only to CDSLs.

The Commission proposed to amend the deferred sales load line in the fee table so that the total installment load or the maximum contingent deferred load (expressed as a percentage) would be shown there. Specifically, the Commission proposed to replace most of the current wording inside the parentheses following the words ''Deferred Sales Load'' with a blank, requiring funds to insert the appropriate description of the basis on which the load is computed. The Commission is adopting this amendment.[29] The Commission also is amending Instruction 14(f) to Item 2 of Form N–1A to require deferred loads other than CDSLs to be reflected in the Example as well.[30]

In addition, as suggested by a commenter, the Commission is clarifying that any deferred sales load, whether based on the offering price or on the NAV, be shown in the fee table as a percentage of the offering price. This is the same basis on which front-end loads are presented.[31] This presentation is intended to enable investors to better compare sales loads (whether front-end or deferred), since the percentage will be based on the same amount (the offering price).

When a combination of sales loads is imposed on a fund's shares (*e.g.*, a 1% front-end and a 5% deferred load), the fee table is required to include a ''Maximum Sales Load'' line showing the cumulative percentage of those charges; the terms of the particular sales charges comprising that figure must be shown on separate lines underneath the ''Maximum Sales Load'' line. This format is designed to enable investors to better appreciate the cumulative effect of the sales charges and compare one fund's sales charges to another's. Finally, as proposed, the Commission is allowing funds to include within the larger fee table a tabular presentation of the schedule of a deferred sales load, including installment payments.[32]

[24] A return of capital generally occurs when a fund's distribution exceeds the fund's aggregate amount of undistributed net taxable income and net realized capital gains. *See Determination, Disclosure, and Financial Statement Presentation of Income, Capital Gain, and Return of Capital Distributions by Investment Companies,* American Institute of Certified Public Accountants, Statement of Position 93–2, 8 (Feb. 1, 1993).

[25] *See infra* section IV.B.

[26] NASD Conduct Rules, Rule 2830(d)(3).

[27] *See* Proposing Release, *supra* note , at 11893.

[28] Paragraph (a)(3) of rule 11a–3 as amended. 17 CFR 270.11a–3. Commenters also suggested other, substantive amendments to rule 11a–3. The Commission will continue to study the issues raised by the commenters and consider them in the context of a separate proposal.

[29] The ''Deferred Sales Load'' line also is redesignated ''Maximum Deferred Sales Load.''

[30] Amended Instruction 14(f) to Item 2 also requires a deferred load that is calculated based on the shares' NAV at the time the load is paid to be based on an account value that incorporates the 5% annual return for each year during the period. Under amended rule 6c–10, a deferred load may be calculated based on the NAV at the time the load is paid, even if the NAV at the time the load is paid is greater than the NAV at the purchase, provided the total amount of the deferred load paid by an investor does not exceed the amount represented by the specified percentage of the offering price. *See supra* note 19.

[31] A fund that calculates its deferred load on the basis of the NAV at the time of purchase that does not equal the offering price (*i.e.*, a fund with a front-end load), should explain in the prospectus, in response to new Item 7(g) of Form N–1A, that the load amount paid by investors is the same even though the percentage amount used in load calculations is different from that shown in the fee table.

[32] As currently required by Instruction 1 to the fee table, a fund also must provide a reference following the fee table to the discussion of any scheduled sales load variations and other

With regard to loads on shares purchased with reinvested distributions, the fee table currently includes a line showing the ''Maximum Sales Load on Reinvested Dividends (as a percentage of the offering price).'' The current format does not contemplate deferred loads on reinvested capital gains distributions and returns of capital, nor loads based on a price other than the offering price. The Commission is modifying this line in the fee table to read ''Maximum Sales Load on Reinvested Dividends [and other Distributions]'' and is replacing most of the current wording in the parenthetical with a blank. A fund that charges a deferred load on shares purchased with reinvested capital gains distributions or returns of capital would include the bracketed words in the caption. Funds will fill in the blank in the parenthetical with the basis on which the load is computed. A conforming amendment is made to Instruction 14(d) regarding disclosure in the Example of deferred sales loads on shares purchased with reinvested distributions.

An illustration of fee table disclosure reflecting the amendments adopted today, and suggested calculation methodologies for the Example, appear as Appendices A and B to this Release.

B. General Prospectus Disclosure

As proposed, the Commission is amending prospectus disclosure requirements concerning the way in which a specific fund's deferred sales load is imposed and computed.[33] New Item 7(g) of Form N–1A covers many operational details that have been mandatory for all funds under current rule 6c–10 but are now subject to greater flexibility under the amendments. These details include the price on which the load is based, whether deferred sales loads may be imposed on shares acquired through reinvested distributions, and the way in which the load is calculated. In a change from the proposal, a deferred load calculated based on the offering price or the NAV at the time of purchase must be presented *both* as a percentage of the offering price and of the NAV. This disclosure will demonstrate that, although the percentage amount used in load calculation and that shown in the fee table may be different, the dollar amount of the load paid by the investor is the same.

If a deferred load is charged on shares acquired through reinvested dividends or other distributions, Item 7(g) requires a statement to that effect, but it does not require this disclosure if the fund does not charge such a load. Item 7(g) also requires an explanation of the way(s) in which a shareholder may be required to pay an installment load, such as through the withholding of dividend payments, involuntary redemptions, or separate billing of an investor's account. Because different methods of collecting load payments could carry different potential tax consequences for investors, the Commission also is publishing a revision to staff Guide 30 of the Guidelines for Form N–1A to require funds to describe briefly in the prospectus any material tax consequences for investors related to an installment load.[34]

C. Performance Data

1. Total Return

The Commission is amending Instruction 1 to Item 22(b)(i) of Form N–1A, as proposed, to require deferred sales loads to be included in calculations of advertised total return data. The amendment requires the calculation to be based on the deduction of the maximum amount of a deferred sales load at the times, in the amounts, and under the terms disclosed in the prospectus.

2. Yield

CDSLs currently are not included in advertised yield calculations. Under existing rule 482(a)(6) under the Securities Act, however, advertisements containing yield data must disclose the maximum amount of a CDSL, state that the performance figures do not reflect the load and that, if reflected, the load would reduce the quoted performance.[35] In addition, rule 12b–1 fees that usually accompany CDSLs are required to be included in the numerator in the yield formula in Item 22(b)(ii) of Form N–1A as expenses, and thereby reflected in the yield data. The amendments will not change the current approach with regard to CDSLs.

With regard to installment loads, the Commission requested comment on two possible approaches to including them in the yield formula. The first approach, modeled on the existing treatment of front-end loads, would require that the total installment load be added to the NAV to reach an assumed ''offering price'' in the denominator in the yield formula (the ''gross-up'' approach). Under the second approach, a thirty-day percentage amount of an installment load would be included as an expense in calculating the yield formula (similar to the manner in which rule 12b–1 fees are treated). This method would understate the yield for those shareholders that have completed paying the installment load.[36]

Commenters believed that installment loads should not be reflected in yield calculations, but that performance data should be accompanied by disclosure of the existence of an installment load pursuant to rule 482(a)(6) under the Securities Act. The Commission, however, has determined that installment loads should be reflected in fund yield calculations, and that the ''gross-up'' approach is the most appropriate way to do so. The fixed percentage amounts of installment loads, and the certainty that the load will be paid, suggest similarity to front-end loads. Installment loads also are assessed on the shareholder account level, rather than deducted from fund assets as is the case for rule 12b–1 fees. Therefore, new Instruction 10 is added to Item 22(b)(ii) of Form N–1A to require installment loads to be reflected in the yield calculations based on the gross-up approach.

D. Dealer Compensation Disclosure

Deferred sales charges are used to pay for a fund's sales or promotional expenses, including commissions to persons who sell fund shares. The amount of commissions paid from front-end sales loads and rule 12b–1 fees currently is required to be disclosed in fund prospectuses.[37] The Commission requested comment whether it should amend Item 7(b)(iv) of Form N–1A to require funds that impose deferred sales loads to provide disclosure about the commissions comparable to that now provided by funds with front-end loads. Alternatively, the Commission requested comment whether proposed new Item 7(g) of Form N–1A should be modified to require this disclosure.

Commenters generally opposed any changes from the current disclosure requirements for dealer compensation.

information about installment loads elsewhere in the prospectus.

[33] The Commission also is amending Instruction 2 to Item 5A of Form N–1A, Management's Discussion of Fund Performance, to require that deferred loads charged other than upon redemption (*i.e.*, installment loads) be reflected in the line graph showing fund performance. This change is similar to the amendment to Instruction 14(f) to Item 2 discussed in section IV.A above.

[34] *See supra* note 21 and accompanying text.

[35] 17 CFR 230.482(a)(6).

[36] This method also would have suggested that installment loads should be reflected in a fund's expense ratio as are rule 12b–1 fees. It is more appropriate, however, for transaction-specific expenses such as installment loads to be considered separately rather than as a component of the fund's expense structure.

[37] Item 7(b)(iv) of Form N–1A requires funds to show in a tabular format in the prospectus the sales load reallowed to dealers as a percentage of the public offering price. Item 7(c) requires similar disclosure for payments to dealers from rule 12b–1 fees.

They pointed out that the NASD currently is studying dealer compensation practices and that related disclosure issues would best be addressed in that context. The Commission will consider revisiting the issue of dealer compensation disclosure in fund prospectuses after the NASD has had an opportunity to complete its study and after further experience with installment loads.

V. Compliance Date

The rule and form amendments will become effective thirty days after publication in the Federal Register. Funds may begin to comply with amended rule 6c–10 on the effective date. Funds that have received exemptive orders allowing deferred sales loads may continue to rely on those orders for all the funds covered by the order.

Registration statements and post-effective amendments filed with the Commission, and yield quotations appearing in fund advertisements or other sales literature, after the effective date must be in compliance with the form amendments. Post-effective amendments made for the purpose of complying with the amendments to Form N–1A may be made pursuant to the immediate effectiveness provisions of rule 485(b) under the Securities Act [17 CFR 230.485(b)], provided the post-effective amendment otherwise meets the conditions for immediate effectiveness under that rule.

VI. Cost/Benefit Analysis

The amendments to rule 6c–10 and Form N–1A should not impose any significant burdens on mutual funds. Rather, the amendments should benefit funds by providing them with alternatives in financing their sales and promotional expenses. The amendments also will enable investors to defer the payment of a sales charge on the purchase of mutual fund shares until redemption or over one or more installment payments during the term of their investment.

VII. Summary of the Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Company Act Release No. 20917. No comments were received on that analysis. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604. The Analysis explains that the amendments to rule 6c–10 allow mutual funds to impose deferred sales loads other than CDSLs and remove certain restrictions in the rule. The Analysis further explains that the amendments to Form N–1A modify the prospectus disclosure requirements for deferred loads to reflect the changes to rule 6c–10, but provide for disclosure similar to that currently made by funds and, therefore, do not impose any additional burdens. A copy of the Analysis may be obtained by contacting Nadya B. Roytblat, Mail Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VIII. Statutory Authority

The Commission is adopting the amendments to rules 6c–10 and 11a–3 under sections 6(c), 11(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –11(a), and –37(a)]. The authority citations for the amendments to Form N–1A precede the text of the amendments.

List of Subjects in 17 CFR Parts 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.6c–10 is revised to read as follows:

§ 270.6c–10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of the deferred sales load does not exceed a specified percentage of the net asset value or the offering price at the time of purchase;

(2) The terms of the deferred sales load are covered by the provisions of Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided*, that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

3. Section 270.11a–3 is amended by revising paragraph (a)(3) to read as follows:

§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.

(a) * * *

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption;

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

5. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: Form N–1A does not, and the amendments will not, appear in the Code of Federal Regulations.

6. Item 2 of Part A of Form N–1A [referenced in sections 239.15A and

274.11A] is amended by revising the caption ''Deferred Sales Load'' and the parenthetical after such caption in paragraph (a)(i), and revising the caption ''Maximum Sales Load Imposed on Reinvested Dividends'' and the parenthetical in paragraph (a)(i), Instruction 5, the parenthetical in Instruction 14(d), and Instruction 14(f) to read as follows:

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 2. Synopsis

(a)(i) * * *

* * * * *

Shareholder Transaction Expenses

* * * * *

Maximum Deferred Sales Load (as a percentage of _____).....%

Maximum Sales Load Imposed on Reinvested Dividends [and other Distributions].....% (as a percentage of_____)

* * * * *

Instructions:

* * * * *

Shareholder Transaction Expenses

5. ''Maximum Deferred Sales Load'' includes the maximum total deferred sales load payable upon redemption, in installments, or both, expressed as a percentage of the amount or amounts stated in response to Item 7(g), *provided that* a sales load that is based on the net asset value at the time of purchase shall be expressed as a percentage of the offering price at the time of purchase. The fee table may include a tabular presentation, within the larger table, of the range over time of any deferred sales load (such as a contingent deferred sales load) that may change over time, or a schedule of any installment load payments.

If more than one type of sales load is charged (*e.g.,* a deferred sales load and a front-end sales load), the first line in the table should read ''Maximum Sales Load'' and show the maximum cumulative percentage. Show the percentage amounts and the terms of each sales charge comprising that figure on separate lines just below.

If a sales charge is imposed on shares purchased with reinvested capital gains distributions or returns of capital, the third line in the table should include the bracketed words.

* * * * *

Example

14. For purposes of the Example in the table:

* * * * *

(d)* * * (A Registrant that charges a sales load on shares purchased with reinvested dividends or other distributions should not reflect these fees in the Example, but should explain in the brief narrative following the table that the Example does not reflect these fees and that the amounts shown would be increased if the fees were reflected.)

* * * * *

(f) Reflect any contingent deferred sales load by assuming redemption of the entire account on the last day of the year; reflect any other type of deferred sales load as being paid at the end of the year in which it is due. In the case of a deferred sales load that is based on the Registrant's net asset value at the time of payment, assume that the net asset value at the end of each year includes the assumed 5% annual return for that and each preceding year.

* * * * *

7. Instruction 2 to Item 5A of Part A of Form N–1A [referenced in sections 239.15A and 274.11A] is amended by removing the phrase ''(or other amounts at redemption or upon closing of an account)'' in the third sentence and adding at the end a sentence to read as follows:

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 5A. Management's Discussion of Fund Performance

* * * * *

Instructions:

* * * * *

2. Sales Load. * * * In the case of any other deferred sales load, assume the deduction in the amount(s) and at the time(s) the load actually would have been deducted.

* * * * *

8. Item 7 of Part A of Form N–1A [referenced in sections 239.15A and 274.11A] is amended by removing the word ''and'' at the end of paragraph (e), removing the period at the end of paragraph (f) and adding ''; and'' in its place, and adding paragraph (g) to read as follows:

Form N–1A

* * * * *

Part A. Information Required in a Prospectus

* * * * *

Item 7. Purchase of Securities Being Offered

* * * * *

(g) a concise explanation of the way in which any deferred sales load is imposed and computed, including: (i) an explanation of the basis on which the specified percentage is calculated (*i.e.,* the offering price, or the lesser of the offering price or the net asset value at the time the load is paid); (ii) the sales charges as a percentage of both the offering price and the net asset value at the time of purchase; (iii) if the method of determining the amount of the load results in the load being applied to shares or amounts representing shares acquired through the reinvestment of dividends or other distributions, a statement to that effect; (iv) a description of the way in which the load is calculated (*e.g.,* in the case of a partial redemption, whether or not the load is calculated as if shares or amounts representing shares not subject to a load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased); and (v) if applicable, an explanation of the way(s) in which a shareholder may be required to pay an installment load (*e.g.,* through the withholding of dividend payments, involuntary redemptions, separate billing of an investor's account).

9. Item 22 of Part B of Form N–1A [referenced in sections 239.15A and 274.11A] is amended by adding a sentence to the end of Instruction 1 to paragraph (b)(i) and an Instruction 10 to paragraph (b)(ii) to read as follows:

Form N–1A

* * * * *

Part B. Information Required in a Statement of Additional Information

* * * * *

Item 22. Calculation of Performance Data

* * * * *

(b) Other Registrants

(i) Total Return * * *

Instructions:

1. * * * If shareholders are charged a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

* * * * *

(ii) Yield * * *

Instructions:

* * * * *

10. If a Registrant (other than a Registrant described in paragraph (a)) imposes, in connection with sales of its shares, a deferred sales load payable in installments, the ''maximum public offering price'' shall include the aggregate amount of such installments (''installment load amount'').

10. Guide 30 to Form N–1A [referenced in sections 239.15A and 274.11A] is amended by adding a paragraph before the last paragraph to read as follows:

Guidelines for Form N–1A

* * * * *

Guide 30. Tax Consequences

* * * * *

If the registrant imposes a sales load payable in installments on the securities being offered, the registrant must describe briefly in response to Item 6 any related material tax consequences for investors.

* * * * *

By the Commission.

Dated: September 9, 1996.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

NOTE: These Appendices to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

ILLUSTRATION OF FEE TABLE AND EXAMPLE

The following illustration assumes that the fund imposes a 1% front-end sales load and a 5% installment load payable in 5 annual installments of 1% each based on the fund's offering price at the time of purchase. If shares are redeemed before all installments are paid, any remaining installments are payable at redemption. The same sales loads are imposed on reinvested dividends and capital gains distributions at the time of reinvestment.

Shareholder Transaction Expenses

Maximum Sales Load (as a percentage of offering price) 6%
paid at time of purchase 1%
paid in installments (or at redemption)
[as follows] 5%

[Year Since Purchase Made	Installment Due	Amount Due if Shares Redeemed
First	1%	5%
Second	1%	4%
Third	1%	3%
Fourth	1%	2%
Fifth	1%	1%][1]

Maximum Sales Load Imposed on Reinvested Dividends and other Distributions 6%
(as a percentage of offering price)

Redemption Fees (as a percentage of amount redeemed) 0%

Exchange Fee 0%

Annual Fund Operating Expenses
(as a percentage of average net assets)

Management Fees 1.00%

12b-1 Fees 0.25%

Other Expenses 0.15%

Total Fund Operating Expenses 1.40%

Example

	1 year	3 years	5 years	10 years
You would pay the following expenses on a $1000 investment, assuming (1) 5% annual return and (2) redemption at the end of each time period:	$74	$103	$134	$221
You would pay the following expenses on the same investment, assuming no redemption:	$34	$83	$134	$221

The purpose of this table is to assist you in understanding the various costs and expenses of the Fund that are borne directly or indirectly by an investor. Please note that the examples are entirely hypothetical. For a more complete description of the costs and expenses, see "Sales Charges." The Example assumes that no distributions will be made and therefore does not reflect these amounts. The expenses shown in the Example would increase if the sales loads paid on shares purchased with reinvested distributions were reflected.

* * * * *

NOTE: In completing the Example to the Fee Table, the staff of the Commission encourages the use of the methodology used in the following worksheet. The worksheet should not be included in the prospectus.

---

[1] Optional -- Information in brackets may be provided in response to Item 7(g) elsewhere in the prospectus.

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APPENDIX A CONTINUED.—EXAMPLE CALCULATIONS
ASSUMING REDEMPTION AT THE END OF EACH TIME PERIOD

Year	Amount invested –	Front-end load=	Beginning value+(5%–1.4%)=	Ending value	Average value×1.4%=	Annual expenses	Deferred load @ redemption	Annual deferred load installment	Amount shown in table
(1)	$1,000.00 –	$10.00=	$990.00+$35.64=	$1,025.64	$1,007.82	$14.11	$50.00	[$10.00]	$74
(2)			$1,015.64+$36.56=	$1,052.20	$1,033.92	$14.47	$40.00	[$10.00]	.....
(3)			$1,042.20+$37.52=	$1,079.72	$1,060.96	$14.85	$30.00	[$10.00]	$103
(4)			$1,069.72+$38.51=	$1,108.22	$1,088.98	$15.25	$20.00	[$10.00]	.....
(5)			$1,098.22+$39.54=	$1,137.76	$1,117.99	$15.65	$10.00	[$10.00]	$134
(6)			$1,127.76+$40.60=	$1,168.36	$1,148.06	$16.07	.....	.....	.....
(7)			$1,168.36+$42.06=	$1,210.42	$1,189.39	$16.65	.....	.....	.....
(8)			$1,210.42+$43.58=	$1,254.00	$1,232.21	$17.25	.....	.....	.....
(9)			$1,254.00+$45.14=	$1,299.41	$1,276.57	$17.87	.....	.....	.....
(10)			$1,299.14+$46.77=	$1,345.91	$1,322.52	$18.52	.....	.....	$221

ASSUMING NO REDEMPTION

Year	Amount invested –	Front-end load=	Beginning value+(5%–1.4%)=	Ending value	Average value×1.4%=	Annual expenses	Annual deferred load installment	Amount shown in table
(1)	$1,000.00 –	$10.00=	$990.00+$35.64=	$1,025.64	$1,007.82	$14.11	$10.00	$34
(2)			$1,015.64+$36.56=	$1,052.20	$1,033.92	$14.47	$10.00	
(3)			$1,042.20+$37.52=	$1,079.72	$1,060.96	$14.85	$10.00	$83
(4)			$1,069.72+$38.51=	$1,108.22	$1,088.98	$15.25	$10.00	.....
(5)			$1,098.22+$39.54=	$1,137.76	$1,117.99	$15.65	$10.00	$134
(6)			$1,127.76+$40.60=	$1,168.36	$1,148.06	$16.07	.....	.....
(7)			$1,168.36+$42.06=	$1,210.42	$1,189.39	$16.65	.....	.....
(8)			$1,210.42+$43.58=	$1,254.00	$1,232.21	$17.25	.....	.....
(9)			$1,254.00+$45.14=	$1,299.14	$1,276.57	$17.87	.....	.....
(10)			$1,299.14+$46.77=	$1,345.91	$1,322.52	$18.52	.....	$221

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Appendix B

ILLUSTRATION OF FEE TABLE AND EXAMPLE

The following illustration assumes that the fund imposes a 5% contingent deferred load based on the NAV at the time of purchase that declines to zero if shares are held for six years or longer (no front-end load is imposed). The same load is imposed on reinvested dividends (but not capital gains distributions) at the time of reinvestment.

Shareholder Transaction Expenses

Maximum Deferred Sales Load (as a percentage of offering price) 5%

[Year Since Purchase Made — Percentage

Year Since Purchase Made	Percentage
First	5%
Second	4%
Third	3%
Fourth	2%
Fifth	1%
Sixth	0%][1]

Maximum Sales Load Imposed on Reinvested Dividends 5%
(as a percentage of offering price)

Redemption Fees (as a percentage of amount redeemed) 0%

Exchange Fee 0%

Annual Fund Operating Expenses
(as a percentage of average net assets)

Management Fees 1.00%

12b-1 Fees 0.75%

Other Expenses 0.15%

Total Fund Operating Expenses 1.90%

Example

	1 year	3 years	5 years	10 years
You would pay the following expenses on a $1000 investment, assuming (1) 5% annual return and (2) redemption at the end of each time period:	$69	$90	$113	$222
You would pay the following expenses on the same investment, assuming no redemption:	$19	$60	$103	$222

The purpose of this table is to assist you in understanding the various costs and expenses of the Fund that are borne directly or indirectly by an investor. Please note that the examples are entirely hypothetical. For a more complete description of the costs and expenses, see "Sales Charges." The Example assumes that no distributions will be made and therefore does not reflect these amounts. The expenses shown in the Example would increase if the sales loads paid on shares purchased with reinvested distributions were reflected.

* * * * *

NOTE: In completing the Example to the Fee Table the staff of the Commission encourages the use of the methodology used in the following worksheet. The worksheet should not be included in the prospectus.

BILLING CODE 8010–01–C

APPENDIX B CONTINUED.—EXAMPLE CALCULATIONS
ASSUMING REDEMPTION AT THE END OF EACH TIME PERIOD

Year	Amount invested	Front-end load =	Beginning value+(5% − 1.9%) =	Ending value	Average value×1.9% =	Annual expenses	Deferred load	Amount shown in table
(1)	$1,000.00 −	$0.00=	$1,000.00+31.00=	$1,031.00	$1,015.50	$19.29	$50.00	$69
(2)			1,031.00+31.96=	1,062.96	1,046.98	19.89	40.00	.....
(3)			1,062.96+32.95=	1,095.91	1,079.44	20.51	30.00	90
(4)			1,095.91+33.97=	1,129.88	1,112.90	21.15	20.00	.....
(5)			1,129.88+35.03=	1,164.91	1,147.39	21.80	10.00	113
(6)			1,164.91+36.11=	1,201.02	1,182.97	22.48	.....	.....
(7)			1,201.02+37.23=	1,238.25	1,219.64	23.17	.....	.....
(8)			1,238.25+38.39=	1,276.64	1,257.44	23.89	.....	.....
(9)			1,276.64+39.58=	1,316.22	1,296.43	24.63	.....	.....
(10)			1,316.22+40.80=	1,357.02	1,336.62	25.40	.....	222

ASSUMING NO REDEMPTION

Year	Amount invested	Front-end load =	Beginning value+(5% − 1.9%) =	Ending value	Average value×1.9% =	Annual expenses	Deferred load	Amount shown in table
(1)	$1,000.00 −	$0.00=	$1,000+31.00=	$1,031.00	$1,015.50	$19.29	$0.00	$19
(2)			1,031.00+31.96=	1,062.96	1,046.98	19.89	0.00	.....
(3)			1,062.96+32.95=	1,095.91	1,079.44	20.51	0.00	60
(4)			1,095.91+33.97=	1,129.88	1,112.90	21.15	0.00	.....
(5)			1,129.88+35.03=	1,164.91	1,147.39	21.80	0.00	103
(6)			1,164.91+36.11=	1,201.02	1,182.97	22.48	0.00	.....
(7)			1,201.02+37.23=	1,238.25	1,219.64	23.17	0.00	.....
(8)			1,238.25+38.39=	1,276.64	1,257.44	23.89	0.00	.....
(9)			1,276.64+39.58=	1,316.22	1,296.43	24.63	0.00	.....
(10)			1,316.22+40.80=	1,357.02	1,336.62	25.40	0.00	222

[FR Doc. 96–23438 Filed 9–16–96; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–22203; File No. S7–24–96]

RIN 3235–AG72

Rule Amendments Relating to Multiple Class and Series Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment amendments to the rule under the Investment Company Act of 1940 that permits open-end management investment companies (''funds'') to issue multiple classes of shares representing interests in the same portfolio. The proposed amendments would expand and clarify the methods a fund may use to allocate among its classes income, gains and losses, and the expenses that are not attributable to a particular class. The proposed amendments also would clarify the shareholder voting provisions of the rule. The Commission also is proposing a technical amendment to the rule under the Investment Company Act that governs the use of fund assets to pay for the distribution of fund shares, as it applies to series funds.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–24–96; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, Office of Regulatory Policy, (202) 942–0690, or, regarding accounting issues, Lawrence A. Friend, Chief Accountant, Office of the Chief Accountant, (202) 942–0590, both in the Division of Investment Management, Stop 10–2, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rules 12b–1 [17 CFR 270.12b–1] and 18f–3 [17 CFR 270.18f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'').

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Executive Summary

The Commission is proposing amendments to rule 18f–3 under the Investment Company Act. Rule 18f–3 permits funds to issue multiple classes of shares representing interests in the same portfolio. Funds generally establish multiple classes of shares as a vehicle for offering investors a choice of methods for paying distribution costs or to allow funds to access alternative distribution channels more efficiently. The rule, among other things, prescribes how a fund must allocate to each class income, gains and losses, and the expenses that are not attributable to a particular class. The proposed amendments would provide greater flexibility in allocating these items. The proposed amendments would permit any fund that declares dividends daily to base allocations on settled shares (*i.e.*, shares for which payment in federal funds has been received). Currently, only funds that declare daily dividends and maintain the same net asset value (''NAV'') per share in each class may use this method. The proposed amendments also would permit funds to base allocations on an additional method, the simultaneous equations method. Under this method, income, gains and losses, and expenses are allocated based on simultaneous equations that are designed to result in the annualized rate of return of each class generally differing from that of the other classes only by the expense differentials among the classes.

The proposed amendments also would clarify shareholder voting rights under the rule when a fund offers one class of shares (the ''purchase class'') that automatically converts into another class (the ''target class''). Rule 18f–3 currently requires shareholders of the purchase class to approve increases in the expenses of the target class under certain circumstances. The proposed amendments would clarify that purchase class shareholders have voting rights only with respect to material increases in expenses that are submitted separately to target class shareholders for their approval.

The Commission is also proposing to amend rule 12b–1 under the Investment Company Act, the rule that governs the use of fund assets to pay for the distribution of fund shares in accordance with a ''rule 12b–1 plan.'' The proposed amendments would clarify how various provisions of the rule (*e.g.*, those requiring shareholder voting) apply to a ''series'' fund. A series fund is a fund that offers investors an opportunity to invest in one or more portfolios, each of which has a specific investment objective. The amendments would clarify that a series fund's rule 12b–1 plan must be severable for each series and that whenever an action is required with respect to the plan (*e.g.*, a shareholder vote on a proposal to increase the fee payable under the plan), that action must be taken separately for each series.

I. Discussion

A. Rule 18f–3

1. Background: Allocation Methods

Rule 18f–3 permits funds to issue multiple classes of shares representing interests in the same portfolio of securities.[1] Funds generally establish

[1] Funds that issue multiple classes of shares must rely on rule 18f–3 or on an exemptive order because such issuances implicate section 18 of the Investment Company Act [15 U.S.C. 80a–18], which, among other things, generally makes it unlawful for a fund to issue any class of ''senior

multiple classes as a vehicle for offering investors a choice of methods for paying distribution costs or to allow funds to access alternative distribution channels more efficiently. Rule 18f–3 provides a framework for addressing certain corporate governance and accounting issues that may create conflicts among the classes. Among other things, the rule prescribes how a fund must allocate to each class income, gains and losses,[2] and expenses that are not attributable to a particular class (''fundwide expenses'').

Rule 18f–3 generally requires a fund to allocate income, gains and losses, and fundwide expenses based on the net assets of each class in relation to the net assets of the fund (''relative net assets'').[3] The rule permits a fund that declares dividends daily, such as a money market fund or a fund that invests in fixed-income securities (a ''daily dividend fund''), to use two alternative allocation methods, provided the fund maintains the same NAV per share in each class.[4] A daily dividend fund may allocate income, gains and losses, and fundwide expenses (i) to each share without regard to class,[5] or (ii) to each class based on relative net assets, excluding the value of subscriptions for shares for which payment in federal funds has not been received (the ''Settled Shares Method'').[6]

a. Settled Shares Method

(1) Requirement For Same NAV Per Share Among Classes

Many daily dividend funds pay dividends from net investment income only on settled shares (*i.e.*, shares that are paid for in federal funds or for which payment has been converted into federal funds). Funds with this dividend policy have noted that the payment of daily dividends to a purchaser of fund shares that did not purchase its shares with immediately available funds would dilute the dividends of other shareholders, since the fund would not yet have invested the proceeds from such purchase.[7] Using the Settled Shares Method to allocate income and fundwide expenses is consistent with this dividend policy.

Some daily dividend fixed-income funds currently use the Settled Shares Method pursuant to exemptive orders that predate the adoption of rule 18f–3. These funds are unable to rely on rule 18f–3 because they do not necessarily maintain the same NAV per share in each class, a requirement for funds that use the Settled Shares Method and rely on rule 18f–3. The proposed amendments would permit a daily dividend fund to use the Settled Shares Method without requiring the fund to maintain the same NAV per share in each class.[8] This requirement may be unnecessary, since the Settled Shares Method will result in appropriate allocations even if NAV per share differs among the classes.

(2) Consistent Application Requirement

The release adopting rule 18f–3 stated that the allocation method selected by a fund ''must be applied consistently.''[9] The Commission staff has indicated, however, that funds may allocate gains and losses based on relative net assets, while using the Settled Shares Method for allocating income and fundwide expenses.[10] Allocating gains and losses based on relative net assets is consistent with the participation of all shares in any increase or decrease in NAV that results from appreciation or depreciation of the underlying securities, including shares that have not yet settled.[11] The proposed amendments would explicitly permit this approach.[12] The Commission believes that many funds take this approach and requests comment whether this approach should be mandatory for funds using the Settled Shares Method.

b. Simultaneous Equations Method

The proposed amendments would permit funds to allocate income, gains and losses, and fundwide expenses based on an additional method, the ''Simultaneous Equations Method.''[13] Under this method, allocation is based on simultaneous equations that are designed to result in the annualized rate of return of each class generally differing from that of the other classes only by the expense differentials among the classes. Using this method allows a fund to simultaneously allocate (or reallocate) various income and capital items based on the fund's operating results, changes in ownership interests of each class, and expense differentials among the classes.[14] Industry representatives have suggested that the results derived from this method are consistent with the purpose of the rule's allocation provisions.

The Commission understands that the equations used in connection with this method continue to be refined. The equations would therefore not be

security'' or to issue classes of shares with different voting rights.

[2] In this release, ''gains and losses'' refers to both realized gains and losses and unrealized appreciation and depreciation.

[3] Rule 18f–3(c)(1) [17 CFR 270.18f–3(c)(1)].

[4] Rule 18f–3(c)(2) [17 CFR 270.18f–3(c)(2)].

[5] Because the fund must maintain the same NAV per share in each class, this method is equivalent to allocations based on relative net assets. Rule 18f–3 requires funds using this method to obtain the agreement of their service providers that, to the extent necessary to assure that all classes maintain the same NAV, the providers will waive or reimburse class expenses. Rule 18f–3(c)(2)(i) [17 CFR 270.18f–3(c)(2)(i)]. The proposed amendments would clarify that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a later time. Proposed rule 18f–3(c)(1)(iv).

[6] The term ''net assets'' includes the value of any receivables, including subscriptions receivable. *See* AICPA, Audits of Investment Companies: Audit and Accounting Guide ¶ 5.13 (May 1994). A fund that requires subscriptions to be accompanied by federal funds will record cash, rather than a receivable, as the asset that relates to the subscription.

[7] *See* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876, 11878–79 & n.20 (Mar. 2, 1995)] (hereinafter ''Adopting Release''); T. Rowe Price Associates, Inc. (pub. avail. Dec. 22, 1986).

A daily dividend fund may invest in securities that settle daily against federal funds (in contrast to other securities that have ''regular way'' (*i.e.*, ''T + 3'') settlement). A daily dividend fund that invests in income-producing securities that have a longer settlement period may choose to place orders for such securities when it receives orders for shares that are not accompanied by payment in federal funds, since it will not have to make payment for such securities before receiving payment for the shares. *Id.* The fund does not start earning interest on such securities until it has paid for them, however; therefore, these securities do not contribute to the fund's income immediately.

[8] Proposed rule 18f–3(c)(1)(iii). The amended rule would define a daily dividend fund as ''any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines its net asset value using the amortized cost method permitted by rule 2a–7.'' The reference to funds that use the amortized cost method under rule 2a–7 is designed to make it clear that valuing net assets based on amortized cost is permitted under rule 18f–3(c) [17 CFR 270.18f–3(c)]. *See* Adopting Release, *supra* note 7, at 11879.

[9] Adopting Release, *supra* note 7, at 11879.

[10] Letter to Investment Company Chief Financial Officers from the Division of Investment Management 5 (Nov. 2, 1995).

[11] Using the Settled Shares Method to allocate gains and losses may cause a divergence of NAV per share among classes, creating a particular problem for those funds that seek to maintain the same or a similar NAV per share in each class. *Id.* This is because NAV per share is based on, among other things, the value of any receivables, including subscriptions to purchase shares for which the fund has not yet received payment. *See supra* note 6. Allocating gains and losses to classes based on the net assets of each class excluding subscriptions receivable causes the shares of each class to increase or decrease in value by a proportionately different amount per share than the shares of other classes.

[12] Proposed rule 18f–3(c)(1)(iii).

[13] Proposed rule 18f–3(c)(1)(ii); *see also* proposed rule 18f–3(c)(2)(iv) (defining the Simultaneous Equations Method).

[14] The equations would allocate the day's income, realized gains (or losses), unrealized appreciation (or depreciation), and fundwide expenses and reallocate each class's undistributed net investment income, undistributed realized gains (or losses), and unrealized appreciation (or depreciation).

specified in the amended rule. Comment is requested whether they should be specified. An example of the equations that have been used is attached to this Release as Appendix A.

c. Request for Comments

The Commission requests comment on the Settled Shares and Simultaneous Equations Methods and whether there are any other allocation methods that should be included in the rule. The Commission also requests comment on the rule's overall approach of describing specific allocation methods and restrictions on the funds that may use them. In particular, the Commission requests comment whether the rule should permit a fund to use any method that results in shareholders of each class receiving their proportionate share of income, gains and losses, and fundwide expenses. Such an approach would provide funds with flexibility and avoid the possible need for further administrative relief. The Commission requests that, in connection with commenting on such approach, commenters address the need for the development of accounting standards applicable to allocation methods to be followed by multiple class funds. Commenters should address, for example, whether Generally Accepted Accounting Principles currently provide appropriate guidance on the allocation methods to be followed by multiple class funds and whether more specific guidance needs to be developed.

Commenters favoring this approach should formulate a recommended standard. Should the rule, for example, permit allocations to be based on any method that is fair to the shareholders of each class? Should the rule permit funds to use any allocation method that produces substantially similar allocations to those that would have resulted if one of the allocation methods prescribed by the rule had been applied? Commenters should also consider whether the rule should require a particular party (*e.g.*, the fund's investment adviser, independent accountants, or board of directors) to determine that the standard had been met. For example, would the accountant's report on internal controls required by sub-item 77B of Form N–SAR offer adequate safeguards for permitting additional flexibility?[15] If so, is it necessary to amend the instructions to sub-item 77B to have the accountant's report specifically address the allocation controls relied upon? Commenters favoring this approach should provide language for any recommended changes to the instructions.

2. Purchase Class Voting Rights

Rule 18f–3 contains certain conditions that address arrangements that involve a class of shares with one type of distribution charge that automatically convert into another class after a specified period of time. The purchase class is generally a class with a higher distribution fee and a contingent deferred sales load (''CDSL'').[16] A CDSL is a sales charge that is assessed when shares are redeemed. The CDSL generally declines to zero over time and is designed to recover any distribution costs that have not yet been recovered from the distribution fees. After a specified period, the purchase class shares convert automatically into the target class, which generally has a low (or no) distribution fee.

One of rule 18f–3's conditions states that if expenses, including payments of distribution fees, are increased materially for the target class without approval of the shareholders of the purchase class, the fund will establish a new target class for the purchase class on the same terms as applied to the target class before the increase.[17] This condition, read literally, appears to require approval by the purchase class shareholders (or the creation of a new target class) for *any* material expense increase that applies to the target class. This could include increases in expenses that are not required to be submitted for shareholder approval (*e.g.*, transfer agency fees) or that are required to be approved by shareholders on a fundwide basis rather than separately by class (*e.g.*, advisory fees). This result was not intended. The condition was designed to give purchase class shareholders voting rights only when an expense increase is submitted for a separate vote of the target class shareholders.

The amended rule would clarify that purchase class shareholders have voting rights (or rights to a new target class) with respect to increases in expenses that are submitted separately for approval by target class shareholders.[18] These expenses would include a material increase in payments under the target class's rule 12b–1 plan and, if submitted for target class approval, an increase in payments under a shareholder services plan.[19] The amendment will not affect whether a matter is required to be submitted to shareholders of the target class.

B. Rule 12b–1

Rule 12b–1 governs the use of fund assets to pay for the distribution of fund shares. Among other things, rule 12b–1 requires that any payments made by the fund in connection with the distribution of its shares be made pursuant to a written rule 12b–1 plan that describes all material aspects of the proposed financing of distribution.[20] Rule 12b–1 also requires certain shareholder votes to be taken with respect to the approval or amendment of the rule 12b–1 plan.

Rule 12b–1 specifies how its shareholder voting and other requirements apply when a fund offers separate classes of shares. The rule provides that if a rule 12b–1 plan covers more than one class, the provisions of the plan must be severable for each class, and that actions required to be taken under the rule must be taken separately for each class (the ''severability provision'').[21] Although the severability provision does not specifically address a fund that offers more than one *series* of shares, the requirements of rule 12b–1 have been interpreted to apply separately to each

[15] *See* 17 CFR 274.101. Prior to the adoption of rule 18f–3, Commission orders required an expert retained by each multiple class fund to file a report with the Commission on the adequacy of accounting procedures of the fund. This requirement was not included in the rule because the Commission and commenters agreed that rule 18f–3 adequately defined the methodology that a fund should follow in allocating income, expenses and other items among the classes. *See* Adopting Release, *supra* note 7, at 11879 & nn.28–29.

[16] A distribution fee is a charge to fund assets that may be used to pay certain distribution expenses in accordance with rule 12b–1 [17 CFR 270.12b–1]. Such fees often are referred to as ''rule 12b–1 fees.'' *See infra* part I.B. *See generally* Exemption for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads, Investment Company Act Release No. 22202 (September 9, 1996).

[17] Rule 18f–3(e)(2)(iii) [17 CFR 270.18f–3(e)(2)(iii)]; *see also* rule 12b–1(b)(4) [17 CFR 270.12b–1(b)(4)] (requiring shareholder approval of any changes in a rule 12b–1 plan that would materially increase the fees payable under the plan).

[18] *See* proposed rule 18f–3(e)(2)(iii); *see also infra* note 23 regarding a technical amendment to rule 12b–1(g) [17 CFR 270.12b–1(g)], which refers to the voting rights of purchase class shareholders in connection with a rule 12b–1 plan applicable to the target class.

[19] *See* rule 18f–3(a)(1)(i) [17 CFR 270.18f–3(a)(1)(i)] (regarding the allocation of expenses under a rule 12b–1 plan or shareholder services plan to a particular class). Purchase class shareholders also would have voting rights with respect to increases in any other expenses specifically assigned to the target class, such as transfer agency fees, but only if the increase is submitted for approval by the target class shareholders. *See* rule 18f–3(a)(1)(ii) [17 CFR 270.18f–3(a)(1)(ii)] (regarding expenses other than fees under a rule 12b–1 or shareholder services plan that may be allocated to a particular class). Since the proposed amendment would refer to expenses allocated under rule 18f–3(a)(1) (i)–(ii), which includes payments authorized under a rule 12b–1 plan, the reference in the current rule to such payments would be deleted as unnecessary.

[20] Rule 12b–1(b) [17 CFR 270.12b–1(b)].

[21] Rule 12b–1(g) [17 CFR 270.12b–1(g)].

series offered by a fund.[22] The Commission proposes to amend rule 12b–1 to reflect this position. As amended, the severability provision also would apply to a rule 12b– plan that covers more than one series of shares.[23]

II. Cost/Benefit Analysis

The amendments to rule 18f–3 would provide funds with greater flexibility in allocating income, gains and losses, and fundwide expenses among classes and would decrease costs for certain funds by allowing them to rely on the rule instead of on an exemptive order. The amendment to rule 12b–1 would not impose any burden since it merely clarifies an existing interpretation of the rule.

III. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to the proposed amendments to rules 12b–1 and 18f–3.

A. Reasons for the Proposed Action

As discussed in part I.A.1, the proposed amendments to rule 18f–3 would provide greater flexibility in allocating income, realized gains and losses, unrealized appreciation and depreciation, and fundwide expenses. The proposed amendments would also permit certain multiple class daily dividend funds that are currently relying on exemptive orders issued prior to the adoption of rule 18f–3 to rely on the rule. As discussed in part I.A.2, another proposed amendment to rule 18f–3 would clarify that purchase class shareholders have voting rights (or rights to a new target class) only with respect to increases in expenses that are submitted separately for approval by target class shareholders.

As discussed in part I.B, the proposed amendments to rule 12b–1 would clarify how various provisions of the rule apply to a series investment company.

B. Objectives

The proposed amendments to the accounting provisions of rule 18f–3 would give multiple class funds more flexibility and would permit certain daily dividend funds that are currently relying on exemptive orders to rely on the rule. The proposed amendment to the provision of rule 18f–3 relating to purchase class voting rights would provide greater certainty by correcting the language of the rule consistent with its original intent. The proposed amendment to rule 12b–1 relating to series funds would codify existing interpretations of the rule.

C. Legal Basis

The Commission is proposing to amend rule 12b–1 under the authority set forth in sections 12(b) and 38(a) of the Investment Company Act, and rule 18f–3 under sections 6(c), 18(i), and 38(a) of the Investment Company Act.

D. Small Entities Subject to the Rule

Rules 12b–1 and 18f–3 apply to registered open-end management investment companies. Any registered open-end management investment company with net assets of $50 million or less as of the end of its most recent fiscal year is considered a small entity under Commission rules.[24] It is estimated that out of approximately 3000 active open-end management investment companies, approximately 500 are considered small entities. Of these 500 small entities, approximately 42 offer multiple classes of shares.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would not impose any new reporting, recordkeeping, or other compliance requirements.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no duplicative, overlapping, or conflicting federal rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives.

1. The Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities

If registered open-end management investment companies that are small entities wish to operate multiple class structures they must comply with either rule 18f–3 or an exemptive order. Rule 18f–3 eased the requirements the Commission imposed in exemptive orders. As discussed above, the amendment to the requirements for using the settled shares method of allocation will allow certain funds that are currently relying on exemptive orders to rely on the rule, which is expected to reduce costs and improve flexibility for these funds.

The addition of the simultaneous equations method to the rule gives funds added flexibility and will not create any compliance burden since the use of that method is optional. The proposed amendment to rule 18f–3 relating to purchase class voting rights and the proposed amendment to rule 12b–1 relating to series funds are merely clarifying changes and will have no adverse impact on small issuers.

In light of the above, different compliance or reporting requirements or timetables are not necessary to accommodate small entities and would not be consistent with the objectives of investor protection.

2. The Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities

As noted above, certain of the proposed amendments are designed to clarify the requirements of rules 12b–1 and 18f–3. The proposed amendment to rule 18f–3 relating to the settled shares method will enable certain funds to rely on the rule, thereby easing disclosure and compliance requirements for those funds. Further simplification of the compliance requirements for small entities would not be consistent with the protection of investors.

3. The Use of Performance Rather Than Design Standards

The Commission is requesting comment on rule 18f–3's approach of describing specific allocation methods and the funds that may use them. In particular, the Commission is requesting comment whether the rule should permit a fund to use any method that results in shareholders of each class

[22] *See* Distribution of Shares by Registered Open-End Management Investment Company, Investment Company Act Release No. 22201 (September 9, 1996). The amendments adopted in Release No. 22201 specified that a rule 12b–1 plan adopted before the shares of a fund are publicly offered or sold to persons who are not affiliated persons of the fund or affiliated persons of such persons does not have to be approved by shareholders. Commenters requested that the Commission clarify that the amendments also applied to a rule 12b–1 plan that related to a series that had not been publicly offered. The Commission adopted that interpretation; the amendments proposed today would codify it.

[23] *See* proposed rule 12b–1(g). A proviso to current rule 12b–1(g) states that under rule 18f–3(e)(2), any vote by target class shareholders with respect to the target class's rule 12b–1 plan also requires a vote of the shareholders of the purchase class. Because the voting rights of purchase class shareholders are fully described in rule 18f–3, the Commission proposes to amend rule 12b–1(g) to delete this proviso. The amended rule would simply state that the provisions of rule 12b–1(g) do not affect the rights of purchase class shareholders under rule 18f–3(e)(2)(iii).

[24] Rule 0–10 [17 CFR 270.0–10].

receiving their proportionate share of income, realized gains and losses, unrealized appreciation and depreciation, and fundwide expenses. Even if such a general standard were adopted, however, it would not decrease compliance costs for multiple class funds since such funds would still have to allocate the various accounting items on a daily basis using an appropriate method. At most, such a general standard would give funds flexibility in choosing the allocation method to be used.

With respect to the other proposed amendments to rules 18f–3 and 12b–1, the Commission believes that it is not possible to adopt performance standards that would achieve the objectives of the rules and be consistent with the Commission's mandate to protect investors.

4. An Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

Exempting small entities from the requirements in the proposed amendments would not be consistent with the Commission's statutory mandate of protecting investors.

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. As described at the beginning of this release, comments may be submitted to the Secretary of the Commission electronically or by letter. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IV. Statutory Authority

The Commission is proposing to amend rule 12b–1 pursuant to the authority set forth in sections 12(b) and 38(a) [15 U.S.C. 80a–12(b), –37(a)] of the Investment Company Act, and rule 18f–3 under sections 6(c), 18(i), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), –18(i), –37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.12b–1 is amended by revising paragraph (g) to read as follows:

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

* * * * *

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(e)(2)(iii).

3. Section 270.18f–3 is amended by revising paragraphs (c) and (e)(2)(iii) to read as follows:

§ 270.18f–3 Multiple class companies.

* * * * *

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company (''relative net assets'');

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided* that the company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets); or

(iv) To each share without regard to class, *provided* that the company is a Daily Dividend Fund that maintains the same net asset value per share in each class and has received undertakings from its adviser, underwriter or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share. Payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net investment income daily, including any money market fund that determines net asset value using the amortized cost method permitted by § 270.2a–7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

* * * * *

(e) * * *

(2) * * *

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

* * * * *

By the Commission.

Dated: September 9, 1996.

Margaret H. McFarland,

Deputy Secretary.

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

Appendix A—Simultaneous Equations Method

The equations set forth below are examples of a set of simultaneous equations that could be used as an allocation method in a multiple class fund with two classes at the end of day t.

Equation 1: $A_t+B_t=G_t+C_t$

Equation 2: $A_t/S_{at}-B_t/S_{bt}=dx(NAV_0)$

where:

A_t: the total net assets to be allocated to class A at the end of day t

B_t: the total net assets to be allocated to class B at the end of day t

G_t: the cumulative undistributed net change in assets from operations for the fund at the end of day t

C_t: the cumulative capital for the fund at the end of day t

S_{at}: the number of shares in class A at the end of day t

S_{bt}: the number of shares in class B at the end of day t

d: the time adjustment factor, calculated as the number of days since the inception of class B or the ex-dividend date of the last income distribution (whichever is more recent), divided by 365

x: the differential in expense ratios between the two classes

NAV_0: the NAV per share for class A and class B on day 0, where day 0 is either the day class B commences trading or the ex-dividend date of the last income distribution, whichever is more recent

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Tuesday
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Part III

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgage Insurance Demonstration: Additional Streamlining; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–2958–F–05]

RIN 2502–AF32

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Home Equity Conversion Mortgage Insurance Demonstration: Additional Streamlining

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the proposed rule issued by the Department on May 10, 1996, which proposed changes to the Home Equity Conversion Mortgage (HECM) Insurance Demonstration, including technical and clarifying changes, to improve and streamline the program as a supplement to the changes made through the interim rule, published on August 16, 1995, and made final on December 21, 1995. This rule also makes further streamlining amendments.

EFFECTIVE DATE: October 17, 1996; except that the amendment to the definition of ''principal limit'' in § 206.3, as made by this rule, shall have an effective date of January 5, 1997.

FOR FURTHER INFORMATION CONTACT: Richard K. Manuel, Acting Director, Single Family Development Division, Office of Insured Single Family Housing, Room number 9272, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2700; TTY (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Home Equity Conversion Mortgage (HECM) Insurance Demonstration was authorized by section 417 of the Housing and Community Development Act of 1987, Pub.L. 100–242, 101 STAT. 1908, which amended the National Housing Act, Pub.L. 73–479, 48 STAT. 1246 (12 U.S.C. 1715z-20) to add new section 255 to permit elderly homeowners to borrow against the equity in their homes. The regulations for the HECM program were established as part 206 of title 24 of the Code of Federal Regulations (June 9, 1989, 54 FR 24833).

The interim rule published on August 16, 1995, at 60 FR 42754, revised 24 CFR part 206 to include improvements to the program that did not require prior public comment before implementation. The interim rule was made final on December 21, 1995, at 60 FR 66476.

On May 10, 1996, at 61 FR 21918, the Department published a proposed rule which reflected additional ideas for improving the program regulations for which the Department desired public comment prior to implementation. The public was afforded a 60-day comment period which expired on July 9, 1996. Seven commenters responded: two attorneys (one on behalf of a mortgagee), three mortgagees, and two national cooperative associations. Below is a listing of the comments presented. Following each comment is the Department's response.

Comment: Section 206.8 would expressly preempt contrary State laws. Nothing in the statute suggests that Congress intended to preempt any State laws. This could be detrimental to HECM lenders if they rely on such provisions which are later over-turned. This section should not be included in the final rule.

Response: The Department has considered the legal arguments made by the commentor and concludes that the Department does have the authority to ensure that all HECM debt will have a first lien priority. As stated in the proposed rule, ''(t)hat priority is a basic assumption in the computer model used to determine the amount of payments to the mortgagor.''

Comment: In § 206.21(b)(3), HUD is proposing to provide itself the unilateral right to make annual adjustments to a HECM loan's interest rate, even in those cases where the underlying contract assigned to HUD provides for monthly adjustments. The commenter challenges the right for HUD to make unilateral changes to the original contract and make annual interest rate adjustments. A yearly adjustment could have a serious adverse effect on consumers when the interest rates are going down, and the consumers cannot enjoy the benefits of decreasing interest charges. This section is inappropriate and should not be included in the final rule.

Response: The Department withdraws this proposed change to convert monthly adjustments to the interest rate to annual adjustments if the mortgage is assigned. It should be noted that the commentor misunderstood the intent of the proposed change. It would not have applied to existing mortgages, but prospectively to mortgages newly originated.

Comment: Several commenters oppose altering the HECM from an open-end credit instrument to a closed-end instrument. The change would deny future HECM users an important freedom enjoyed by current HECM users: the option to conserve the estates they will leave to their heirs by reducing outstanding loan balances when circumstances permit it, while retaining the right to draw again upon this revolving credit should needs arise. This change would make HECMs less attractive and less functional to older people and would be a significant change for the worse in the HECM program. Although the ability to redraw may not be a frequently used feature by HECM borrowers, the ability to re-borrow raises the ''comfort level'' of some HECM borrowers who may already be confused and uncertain about this mortgage loan product.

The Truth in Lending Act (TILA) rules for open-end credit are not burdensome in the origination process. For example, the disclosures provided pursuant to Regulation Z can be generated on a printed form with a minimal number of blanks completed with costs for a particular State. These disclosures can then be copied and used for multiple transactions. Furthermore, if the change is adopted, in addition to standard closed-end truth in lending disclosure, lenders will have to produce closed-end credit variable rate transaction program disclosures pursuant to Regulation Z because virtually all HECM loans have adjustable rates. In many respects these disclosures are similar to the home equity open-end credit disclosures currently provided pursuant to Regulation Z at application, and therefore, nothing is gained from the change to closed-end requirements with respect to disclosures given at application.

FNMA has recently introduced the Home Keeper open-end credit reverse mortgage program and has no current plans to change its program to closed-end credit. Therefore, lenders will still have to be familiar with open-end credit requirements, and it will be confusing to both lenders and applicants to have two similar programs, one open-end credit and one closed-end credit.

Response: We agree with commenters and withdraw the proposed rule change that would make HECMs ''closed end'' credit for purposes of the regulations implementing the Truth in Lending Act.

Comment: One commenter recommends an improvement in the way servicing firms present periodic HECM statements of account to borrowers. Currently, most HECM servicers omit a statement of the line of credit funds available to the borrower, and all servicers have declined to

inform borrowers of the rate of growth in effect for these available funds as of the statement date.

Response: This comment does not apply to this rule. We will review, however, the actual practices and requirements for lender statements of account to the borrower and determine if they include adequate disclosures of the loan balances and account activities.

Comment: The HECM regulations should be expanded to include housing cooperatives; elderly residents of housing cooperatives should not be excluded. This will have an enormous impact on the ability of elderly homeowners to afford to live on their own.

If HUD expands the HECM regulations to include housing cooperatives, the regulations should also be changed to allow HUD to insure a HECM on a unit in a condominium or housing cooperative project even if the project does not meet usual HUD policy regarding ''rights of first refusal.'' In both a condominium and a housing cooperative, rights of first refusal are a necessary safeguard for the project. In addition, it is an industry-wide accepted practice that protects the investment of these homeowners as well as the mortgage holder. Rights of first refusal do not prevent the unit from being widely marketable without restrictions to a wide potential market. Rather, it should be viewed as enhancing the value of the unit as well as providing a necessary protection for future purchasers.

Response: The single family insurance program for cooperative units is inactive. Cooperative units, therefore, are not eligible for the HECM program. At this time, HUD lacks the field and headquarters resources to undertake this type of effort which would require us to first study the feasibility of including cooperative units in the HECM program.

Comment: The commenter agrees with HUD's proposal to give the Secretary the option to eliminate the HUD-held second mortgage. It has proven to be cumbersome and costly. A lot of time is spent explaining the function of the second mortgage to lenders, borrowers, title companies, and recorders.

Response: HUD will keep this proposal in the final rule.

This Final Rule

This rule makes final the provisions proposed in the May 10, 1996 proposed rule. In light of the comments discussed above, the Department withdraws the proposed change to § 206.21(b)(3) to convert monthly adjustments to the interest rate to annual adjustments if the mortgage is assigned. The Department also withdraws the proposed change to § 206.3 to add a new definition of ''mortgage balance'' that would make HECMs ''closed end'' credit and a related proposed change in § 206.209(a).

The effective date for the amendment to the definition of ''principal limit'' in § 206.3, is delayed until 120 days from date of publication. Desktop HECM software will have to be modified, and the Lockheed/Martin (CDSI) system will also have to be changed. Also, lenders, servicers, and FNMA will probably have to make system changes. The extended delayed effective date for this particular amendment will provide the time necessary for the various system changes to be made.

Streamlining

President Clinton's memorandum of March 4, 1995, titled ''Regulatory Reinvention Initiative'' directed heads of Federal departments and agencies to review all existing regulations to eliminate those that are outdated and modify others to increase flexibility and reduce burden. As a part of HUD's overall effort to reduce regulatory burden and streamline the content of title 24 of the Code of Federal Regulations, this rule removes those provisions which are unnecessary to be codified because they are duplicative of statutory language or because they can be made available through other non-rulemaking means.

The August 16, 1995 interim rule (as made final on December 21, 1995) made changes to part 206 to improve and streamline the program based on the first five years of the demonstration. This final rule also makes additional streamlining changes by removing several provisions of the HECM regulations which repeat statutory language from the legislation. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since these requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. This final rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference. The following streamlining amendments are made, therefore, by this rule:

1. Section 206.1 *Purpose* is amended to state that the purpose is set out in section 255(a) of the National Housing Act (NHA).

2. Section 206.3 *Definitions* is amended to delete an unnecessary definition and, for certain other definitions, to cross-reference to the statute or other sections of the CFR in order to avoid duplication.

3. Section 206.9 *Eligible mortgagees* is amended to revise paragraph (a) so that it cross-references in order to the statute to avoid duplication.

4. Section 206.33 *Age of mortgagor* is amended to remove an outdated reference.

5. Section 206.41 *Counseling* is amended to revise paragraph (b) so that it cross-references to the statute in order to avoid duplication.

6. Section 206.43 *Information to mortgagor* is deleted because it pertains to material to be given by the mortgagee to the mortgagor and can be handled in a handbook or other issuance.

7. The last sentence of § 206.47(c) is deleted because it merely repeats the substance of § 206.31(b).

8. Section 206.115 *Termination* is deleted because the provisions are combined with § 206.133(f) *Termination of insurance contract—Effect of termination.*

9. Section 206.119 *Written statement of procedures to mortgagor* is deleted because it pertains to material that can be handled in a handbook or other issuance.

10. A technical correction is made to § 206.121(b) to substitute and incorrect reference to the Treasury Financial Manual.

Findings and Certifications

Information Collection Requirements. The information collection requirements for the Home Equity Conversion Mortgage Insurance Demonstration have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, and have been assigned OMB Control Number 2528–0133. 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. This rule does not contain additional information collection requirements.

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule is limited to revision of the Home Equity Conversion Mortgage Demonstration. Specifically, the requirements of the rule are directed to making the program more efficient for participating mortgagees, mortgagors and the Department.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, has determined that § 206.8 of the rule has federalism implications. Specifically, the rule provides that State law on lien priority would be preempted if HECM loan advances made by private mortgagees would not have a first lien priority (subject only to liens for State or local taxes or special assessments). (Preemption is not an issue for loan advances made by HUD because Federal law rather than State law would apply under *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979).

The purpose of the rule is to permit a mortgagee to be able to continue to make loan advances in accordance with the loan agreement (including advances for accruing interest and mortgage insurance premiums) as long as the elderly homeowner/mortgagor desires to continue to occupy his or her home, while still maintaining a first lien priority for all advances. If State law was applied and resulted in granting priority to some other lien created after the HECM was recorded, the mortgagee would need to stop further payments to the mortgagor. The mortgagee might also need to foreclose to stop the continuing accrual of items such as interest and mortgage insurance premium with a junior lien priority. Either result would conflict with the HECM program goal of preventing displacement of the elderly homeowner, either directly from foreclosure or indirectly because of lack of funds available to the homeowner for the expenses of homeownership.

This conflict itself might result in preemption of State law under relevant Supreme Court opinions. The rule removes any doubt and provides needed clarification for HUD, mortgagees, and other creditors who may rely on the mortgagor's equity. HUD has concluded that State law would ordinarily result in a first lien status for all HECM loan advances, but is concerned that applicable law is not always clear and that some situations might occur in which the application of State law would leave the first lien status in doubt. The effect of the preemption is likely to be small but it is important to ensure that the HECM program remains a first mortgage program as intended by Congress.

HUD has concluded that it is not necessary to preempt laws that would give priority to liens for unpaid State or local taxes or special assessments. If the mortgagee pays them and later files an insurance claim, HUD would reimburse the mortgagee for those amounts as part of the insurance benefits. This distinguishes these liens from other liens and there is therefore no need to object to a superior lien position. This exception permitting superior liens for unpaid taxes and special assessments means that the proposed rule would have no substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States.

The Department believes that although the rule might have federalism implications, it is designed to achieve a legitimate Federal purpose and is carefully crafted to limit its effects to those necessary to achieve that end. In these circumstances, the Department believes that the Order imposes no bar to implementation of the rule. For these reasons, the General Counsel has determined that the rule's federalism implications are not sufficiently significant to warrant preparation of a Federalism Assessment under section 6(b) of the Order.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance number for the HECM progam is 14.183.

List of Subjects for 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 206 is amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

2. Section 206.1 is revised to read as follows:

§ 206.1 Purpose.

The purposes of the Home Equity Conversion Mortgage Insurance program are set out in section 255(a) of the National Housing Act, Public Law 73–479, 48 STAT. 1246 (12 U.S.C. 1715z–20) (''NHA'').

3. Section 206.3 is amended by removing the term ''assessment,'' by revising the first sentence of the definition of ''expected average mortgage interest rate,'' and by revising the definitions of ''Contract of insurance,'' ''MIP,'' ''Mortgagee,'' ''principal limit,'' and ''Secretary,'' to read as follows:

§ 206.3 Definitions.

* * * * *

Contract of insurance (See 24 CFR 203.251(j)).

* * * * *

Expected average mortgage interest rate means the mortgage interest rate used to calculate future payments to the mortgagor and is established when the mortgage interest rate is established.

* * *

* * * * *

MIP (See 24 CFR 203.251(k)).

* * * * *

Mortgagee (See section 255(b)(2) of NHA).

* * * * *

Principal limit means the maximum disbursement that could be received in any month under a mortgage, assuming that no other disbursements are made, taking into account the age of the youngest mortgagor, the mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for purposes of calculating the principal limit. The principal limit is used to calculate payments to a mortgagor. It is calculated for the first month that a mortgage could be outstanding using

factors provided by the Secretary. It increases each month thereafter at a rate equal to one-twelfth of the mortgage interest rate in effect at that time, plus one-twelfth of one-half percent per annum, unless the mortgage was executed on or after January 5, 1997. If the mortgage was executed before January 5, 1997, the principal limit increases at a rate equal to the expected average mortgage interest rate plus one-twelfth of one-half percent per annum. The principal limit may decrease because of insurance or condemnation proceeds applied to the mortgage balance under § 209.209(b) of this chapter.

* * * * *

Secretary (See 24 CFR 5.100).

4. Subpart A is amended to add a new § 206.8 to read as follows:

§ 206.8 Preemption.

(a) *Lien priority.* The full amount secured by the mortgage shall have the same priority over any other liens on the property as if the full amount had been disbursed on the date the initial disbursement was made, regardless of the actual date of any disbursement. The amount secured by the mortgage shall include all direct payments by the mortgagee to the mortgagor and all other loan advances permitted by the mortgage for any purpose including loan advances for interest, taxes and special assessments, premiums for hazard or mortgage insurance, servicing charges and costs of collection, regardless of when the payments or loan advances were made. The priority provided by this section shall apply notwithstanding any State constitution, law or regulation.

(b) *Second mortgage.* If the Secretary holds a second mortgage, it shall have a priority subordinate only to the first mortgage (and any senior liens permitted by paragraph (a) of this section).

5. Section 206.9 is amended by revising paragraph (a) to read as follows:

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* (See section 255(b)(3) of NHA).

* * * * *

6. Section 206.19 is amended to revise paragraph (c) to read as follows:

§ 206.19 Payment options.

* * * * *

(c) *Line of credit payment option.* Under the line of credit payment option, payments are made by the mortgagee to the mortgagor at times and in amounts determined by the mortgagor as long as the amounts do not exceed the payment amounts permitted by § 206.25(d).

* * * * *

7. Section 206.25 is amended to revise paragraph (d) to read as follows:

§ 206.25 Calculation of payments.

* * * * *

(d) *Line of credit separately or with monthly payments.* If the mortgagor has a line of credit, separately or combined with the term or tenure payment option, the principal limit is divided into an amount set aside for servicing charges under § 206.19(d), an amount equal to the line of credit (including any portion of the principal limit set aside for repairs or property charges under § 206.19(d)), and the remaining amount of the principal limit (if any). The line of credit amount increases at the same rate as the total principal limit increases under § 206.3. A payment under the line of credit may not exceed the difference between the current amount of the principal limit for the line of credit and the portion of the mortgage balance, including accrued interest and MIP, attributable to draws on the line of credit.

* * * * *

8. Section 206.26 is amended to revise paragraph (d) to read as follows:

§ 206.26 Change in payment option.

* * * * *

(d) *Fee for change in payment.* The mortgagee may charge a fee, not to exceed an amount determined by the Secretary, whenever payments are recalculated.

* * * * *

9. Section 206.27 is amended to revise paragraphs (c)(1) and (d) to read as follows:

§ 206.27 Mortgage provisions.

* * * * *

(c) * * *

(1) The mortgage shall state that the mortgage balance will be due and payable in full if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or a mortgagor conveys all or his or her title in the property and no other mortgagor retains title to the property. For purposes of the preceding sentence, a mortgagor retains title in the property if the mortgagor continues to hold title to any part of the property in fee simple, as a leasehold interest as set forth in § 206.45(a), or as a life estate.

* * * * *

(d) *Second mortgage to Secretary.* Unless otherwise provided by the Secretary, a second mortgage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before a Mortgage Insurance Certificate is issued for the mortgage.

* * * * *

10. Section 205.33 is revised to read as follows:

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance.

11. Section 206.35 is amended to add a new sentence at the end, to read as follows:

§ 206.35 Eligibility of title.

* * * If one or more mortgagors hold a life estate in the property, for purposes of this section only the term ''mortgagor'' shall include each holder of a future interest in the property (remainder or reversion) who has executed the mortgage.

12. Section 206.41 is amended by revising paragraph (b) to read as follows:

§ 206.41 Counseling.

* * * * *

(b) *Information to be provided.* (See section 255(f) of NHA).

* * * * *

§ 206.43 [Removed and reserved]

13. Section 206.43 is removed and reserved.

14. Section 206.47 is amended to add a new paragraph (e) to read as follows:

§ 206.47 Eligible properties.

* * * * *

(e) *Freely marketable.* The property must be freely marketable. Conveyance of the property may only be restricted as permitted under 24 CFR 203.41 or 24 CFR 234.66 and this part.

* * * * *

§ 206.47 [Amended]

15. Section 206.47 is amended to remove the last sentence of paragraph (c).

§ 206.115 [Removed and reserved]

16. Section 206.115 is removed and reserved.

17. Section 206.117 is revised to read as follows:

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary may hold a second mortgage to secure repayment by

the mortgagor under § 206.27(d) or may accept assignment of the first mortgage.

§ 206.119 [Removed and reserved]

18. Section 206.119 is removed and reserved.

19. In § 206.121 paragraph (b) is amended by removing the term ''Treasury Fiscal Requirements Manual'' from the second sentence and to add in its place the term ''Treasury Financial Manual'', and paragraph (c) is amended by revising the first and second sentences to read as follows:

§ 206.121 Secretary authorized to make payments.

* * * * *

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage, if any. Payments will be due and payable in the same manner as under the insured first mortgage, except that if the first mortgage provided for monthly adjustments to the interest rate under § 206.21(b)(2) then the Secretary may convert the second mortgage to an annually adjustable interest rate under § 206.21(b)(1) at any time by providing notice to the mortgagor. * * *

* * * * *

20. Section 206.125 is amended to revise paragraph (d)(3) to read as follows:

§ 206.125 Acquisition and sale of the property.

* * * * *

(d) * * *

(3) The mortgagee must give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute ''reasonable diligence'' for each State is made available to mortgagees.

* * * * *

21. Section 206.133 is amended to revise paragraph (f) to read as follows:

§ 206.133 Termination of insurance contract.

* * * * *

(f) *Effect of termination.* When the insurance contract is terminated, the mortgagee shall pay the monthly MIP which has accrued for the current month and which has not yet been paid to the Secretary, but the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

* * * * *

22. Section 206.209 is revised to read as follows:

§ 206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay a mortgage in full or in part without charge or penalty at any time, regardless of any limitations on prepayment stated in a mortgage.

(b) *Insurance and condemnation proceeds.* If insurance or condemnation proceeds are paid to the mortgagee, the principal limit and the mortgage balance shall be reduced by the amount of the proceeds not applied to restoration or repair of the damaged property.

Dated: September 6, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–23717 Filed 9–16–96; 8:45 am]

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federal register

Tuesday
September 17, 1996

Part IV

Department Housing and Urban Development

24 CFR Part 207, et al.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Conversion From Coinsurance to Full Insurance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 207, 251, 252; and 255

[Docket No. FR–3813–F–02]

RIN 2502–AG50

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Conversion From Coinsurance to Full Insurance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On September 19, 1995 (60 FR 48596), HUD published an interim rule which amended its multifamily coinsurance regulations. The September 19, 1995 interim rule provided coinsuring lenders with two new options in dealing with defaulted coinsured mortgages. Specifically, the interim rule permitted certain coinsuring lenders to request that HUD endorse defaulted mortgages for full insurance. Additionally, the interim rule established a partial payment of claim procedure which permitted coinsuring lenders to advance funds to cure mortgage delinquencies on a coinsured mortgage and to reduce principal on that mortgage to a level that restored the financial viability of the project. This rule finalizes the policies and procedures set forth in the September 19, 1995 interim rule. Further, this final rule makes several clarifying and streamlining amendments to the September 19, 1995 interim rule.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Steven J. Hans, Housing Policy Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500, Room 6278, telephone (202) 708–3730 ext. 2682. Hearing or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. The September 19, 1995 Interim Rule

On October 10, 1994 (55 FR 41312), HUD published a final rule terminating the authority of the FHA Commissioner to insure mortgage loans under the coinsurance program. The final rule also reduced HUD's coinsurance regulations at 24 CFR parts 251, 252, and 255 to a single section concerning the program phase-out process. However, those regulations removed by the October 10, 1994 final rule continue to govern the rights and obligations of mortgagors, coinsuring lenders, and HUD under coinsurance contracts entered into before the termination of the coinsurance programs.

On September 19, 1995 (60 FR 48596), HUD published an interim rule amending 24 CFR parts 251, 252, 255. The September 19, 1995 interim rule, which became effective on October 19, 1995, provided coinsuring lenders with two new options for dealing with defaulted coinsured mortgages. The changes made by the rule were designed to reduce Government costs, benefit coinsuring lenders by minimizing their risk of default under a GNMA guaranty agreement, and encourage the continued viability of housing financed with coinsured mortgages. The first amendment permitted coinsuring lenders to request that HUD endorse certain coinsured mortgages for full insurance. The second amendment established a partial payment of claim mechanism for coinsuring lenders. The September 19, 1995 interim rule described in detail the amendments to 24 CFR parts 251, 252, and 255.

II. This Final Rule

The public comment period on the September 19, 1995 interim rule expired on November 20, 1995. No public comments were submitted. Although no changes are being made as a result of public comment, HUD has determined that it is necessary to make several revisions to the September 19, 1995 interim rule.

First, as part of HUD's continuing efforts to implement the President's regulatory reform initiative, this final rule makes several streamlining amendments to the interim rule. These changes will increase flexibility and remove unnecessary regulatory provisions. Further, this rule requires that a coinsuring lender convert to full insurance before accepting a partial payment of claim. This final rule also clarifies that coinsuring lenders must file an insurance claim upon conversion to full insurance. Finally, the rule amends HUD's multifamily mortgage insurance regulations at 24 CFR part 207 to reflect the procedures established by the September 19, 1995 interim rule.

A. Streamlining Parts 251, 252, and 255

In response to President Clinton's regulatory reform initiative, HUD conducted a page-by page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. As a result of this review, HUD has made several streamlining amendments to the September 19, 1995 interim rule.

One of the goals of the President's initiative is to increase regulatory flexibility. The September 19, 1995 interim rule made conversion to full insurance available only to coinsured mortgages which back GNMA guaranteed securities. HUD originally developed the conversion procedure to assist such lender-issuers. Under the former regulations, the option to have a mortgage endorsed for full insurance was available only to GNMA after it had taken over all loans in a coinsuring lender-issuer's portfolio following the lender-issuer's default under the GNMA guaranty agreement. In response to the President's call for increased flexibility, HUD has decided to make conversion available to all coinsuring lenders. Coinsuring lenders electing to convert to full insurance will still be required to meet all the other regulatory requirements for conversion established by the September 19, 1995 interim rule.

This final rule contains several fees. However, the fee amounts may change over time. To prevent the necessity for cumbersome rulemaking procedures each time a fee is revised, HUD has set forth all the required fees in an appendix to this final rule. The regulatory text still establishes the requirement for the payment of the fees, and directs lenders to the appendix. This appendix will not be codified in title 24 of the Code of Federal Regulations. HUD will update and revise the appendix as necessary.

The September 19, 1995 interim rule made identical amendments to 24 CFR parts 251, 252, and 255. Another goal of President Clinton's regulatory reform initiative is the elimination of repetitious regulatory provisions. Accordingly, this final rule amends 24 CFR parts 252 and 255 to simply cross-reference to the conversion and partial payment of claim requirements set forth in 24 CFR part 251.

B. Revision to Partial Payment of Claim Procedures

This final rule requires that coinsuring lenders convert to full insurance prior to accepting a partial payment of claim. Subsequent to conversion, the full insurance requirements at 24 CFR part 207 will govern any partial payment of claim. Unlike the September 19, 1995 interim rule, therefore, this final rule does not establish a separate partial payment of claim mechanism for coinsuring lenders under 24 CFR parts 251, 252, or 255.

HUD determined that the costs it would incur in administering the separate partial payment of claim

procedure might be excessive. HUD's regulation at 24 CFR part 207 already contains a partial payment of claim mechanism which has proven its effectiveness in, both restoring the financial viability of troubled projects and in minimizing government costs. Accordingly, this final rule requires that coinsuring lenders wishing a partial payment of claim utilize the procedure set forth in 24 CFR part 207.

C. Claim Required Upon Conversion

HUD developed the procedure for conversion to full insurance as a means of assisting coinsuring lenders who are dealing with defaulted coinsured mortgages and who are eligible for insurance benefits. HUD always intended that coinsuring lenders immediately file an insurance claim upon conversion. This final rule clarifies HUD's intent by amending § 251.3 to require that lenders file a claim for insurance benefits upon the Commissioner's endorsement of the mortgage for full insurance.

D. Amendments to Full Insurance Regulations

The September 19, 1995 interim rule established a fee on coinsuring lenders converting to full insurance. Further, the rule set forth additional fees on lenders who, subsequent to converting to full insurance, receive payment for the full or partial insurance mortgage amount. The September 19, 1995 interim rule established these additional fees through amendments to HUD's coinsurance regulations at 24 CFR parts 251, 252, and 255. However, once the FHA Commissioner endorses a coinsured mortgage for full insurance, the lender is no longer governed by the coinsurance program regulations. Rather, the lender must now abide by HUD's multifamily mortgage insurance regulations at 24 CFR part 207. This final rule amends part 207 to incorporate the fees. Specifically, the rule revises § 207.259, which sets forth the requirements for full insurance benefits.

III. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that he policies contained in this final rule 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. Specifically, the requirements of this final rule are directed toward participants in the FHA multifamily coinsurance programs. It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with this program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The final rule merely amends the regulations governing HUD's multifamily coinsurance programs. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs related to family concerns.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that his final rule not have a significant economic impact on a substantial number of small entities. This rule finalizes the policies and procedures set forth in the September 19, 1995 interim rule. It permits coinsuring lenders to request that HUD endorse certain defaulted mortgages for full insurance. Further, the rule makes several streamlining and clarifying amendments to the interim rule. These changes will increase flexibility, remove unnecessary regulatory provisions, and permit the continued viability of housing financed with coinsured mortgages. This final rule will not have any meaningful impact on any entity.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgages insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 251, 252, and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713 and 1715b; 42 U.S.C. 3535(d).

2. Section 207.258b is amended by adding a new paragraph (e) to read as follows:

§ 207.258b Partial payment of claim.

* * * * *

(e) Lenders receiving a partial payment of claim following the Commissioner's endorsement of the

Mortgage for full insurance under parts 251, 252, or 255 of this chapter, will pay HUD a fee in an amount set forth through Federal Register notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

3. Section 207.259 is amended by adding a new paragraph (b)(2)(v) to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(v) In the case of a lender receiving insurance benefits for the full Mortgage amount upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR parts 251, 252, or 255, the amount of the fee set forth through Federal Register notice. HUD may, in its discretion, collect this fee rather than deducting the fee from the total of the items computed under paragraph (b)(1) of this section.

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

4. The authority citation for 24 CFR part 251 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

5. Section 251.3 is revised to read as follows:

§ 251.3 Case-by-case conversion to full insurance.

Upon the request of a coinsuring lender, the Commissioner may endorse a coinsured Mortgage for full insurance, effective as of the date of such endorsement, if the Commissioner is satisfied that:

(a) Continuing the Mortgage under coinsurance could jeopardize the lender's viability and ability to service its remaining portfolio of coinsured Mortgages;

(b) The lender has made reasonable efforts to work out any Mortgage default consistent under 24 CFR 251.811 (1990), but the remedies available to the lender have not been adequate to reinstate the Mortgage;

(c) The conversion would be less costly to HUD than if the Mortgage remained coinsured;

(d) The lender has paid HUD the fee set forth through Federal Register notice; and

(e) The lender agrees to give the Commissioner written notice under 24 CFR 207.258 of its intent to file an insurance claim upon the Commissioner's endorsement of the Mortgage for full insurance.

§§ 251.4 and 251.5 [Removed]

6. Sections 251.4 and 251.5 are removed.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES.

7. The authority citation for 24 CFR part 252 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

8. Section 252.3 is revised to read as follows:

§ 252.3 Case-by-case conversion to full insurance.

Cross-reference. The provisions of 24 CFR 251.3 apply to this part.

§§ 252.4 and 252.5 [Removed]

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

10. The authority citation for 24 CFR part 255 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

11. Section 255.3 revised to read as follows:

§ 255.3 Case-by-case conversion to full insurance.

Cross-reference. The provisions of 24 CFR 251.3 apply to this part.

§§ 255.4 and 255.5 [Removed]

12. Sections 255.4 and 255.5 are removed.

Dated: June 28, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: This appendix will not appear in Title 24 of the CFR.

Appendix—Fees for Conversion to Full Insurance and Partial Payment of Claim Under 24 CFR Parts 207, 251, 252, and 255

Sections

1. Purpose
2. Fee for conversion to full insurance under 24 CFR parts 251, 252, and 255.
3. Fees for former coinsuring lenders under 24 CFR part 207.
4. Future revisions to this appendix.

1. Purpose. HUD's regulation at 24 CFR 251.3 permits certain coinsuring lenders under 24 CFR parts 251, 252, and 255 to request that HUD endorse the coinsured Mortgage for full insurance. Section 251.3 states that coinsuring lenders who elect to convert to full insurance must pay HUD a fee in an amount ''set forth through Federal Register notice.'' One of the purposes of this appendix is to identify this fee.

HUD's regulations at 24 CFR part 207 govern its multifamily Mortgage insurance program. Part 207 establishes certain fees on formerly coinsured lenders who have converted to full insurance and subsequently receive payment for the full or partial insured Mortgage amount. Section 207.258b, which governs partial payment of claims, and § 207.259, which sets forth the requirements for full insurance benefits, state that these fees will be in an amount ''set forth through Federal Register notice.'' This appendix sets forth these fees.

2. Fee for conversion to full insurance under 24 CFR parts 251, 252, or 255. Coinsuring lenders requesting the Commissioner's endorsement of a coinsured Mortgage for full insurance under 24 CFR part 251, 252, or 255, will pay HUD a fee in an amount equal to 5 dollars for every 1,000 dollars of the unpaid principal balance. The coinsuring lender must pay this fee concurrently with submission of the request for the Commission's endorsement. HUD will not process requests for conversion to full insurance until this fee is paid.

3. Fees for former coinsuring lenders under 24 CFR part 207.

(a) Lenders receiving payment of insurance benefits for the full Mortgage amount under 24 CFR part 207, upon the Commissioner's endorsement of the Mortgage for full insurance pursuant to 24 CFR part 251, 252, or 255, must pay HUD a fee in an amount equal to 10 percent of the outstanding principal balance on the Mortgage. HUD may, in its discretion, collect this fee or deduct the fee from any payment it makes in the claim process.

(b) Lenders receiving a partial payment of claim under 24 CFR part 207, upon the Commission's endorsement of the Mortgage for full insurance pursuant to 24 CFR part 251, 252, or 255, must pay HUD a fee in an amount equal to 10 percent of the reduction in the unpaid principal balance resulting from the partial payment. HUD may, in its discretion, collect this fee or deduct the fee from any payment it makes in the claim process.

(c) The fees described in paragraphs (a) and (b) of this section are in *addition* to the fee established by section 2. of this notice.

4. Future revisions to this appendix.

HUD may update or revise this appendix as necessary.

[FR Doc. 96–23716 Filed 9–16–96; 8:45 am]

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Tuesday
September 17, 1996

Part V

Department of Education

Federal Title IV Student Assistance; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Federal Title IV Student Assistance

AGENCY: Department of Education.

ACTION: Notice of the availability of the National Student Loan Data System (NSLDS) to be used by postsecondary educational institutions to meet the regulatory requirements for obtaining financial aid transcript (FAT) information for purposes of determining student eligibility for Federal Title IV student assistance.

SUMMARY: The Secretary gives notice to institutions of higher education that, beginning with the 1996–97 award year, the NSLDS may be used by postsecondary educational institutions to meet the regulatory requirements of Section 668.19(a)(1) and (a)(2)(i) for obtaining FAT information for most Title IV student aid applicants. Institutions were informed of this availability and the conditions under which the NSLDS may be used for FAT purposes, in a Dear Colleague letter dated July 1996 (GEN–96–13). Further guidance may be given by the Department in subsequent notifications.

Background

The FAT regulations were developed to make certain that schools had all of the information necessary to enforce both student eligibility provisions and to be in compliance with program-specific award maximums contained in the Higher Education Act (HEA) of 1965, as amended. The law and supporting regulations provide that, among other eligibility criteria, an applicant for Federal student aid cannot be in default on a Title IV student loan or owe an overpayment on Title IV aid. Additionally, the Pell Grant and loan programs have annual and/or aggregate award maxima that must be considered when awarding Title IV aid to a student who transfers into one eligible institution from another. The Department has determined that obtaining FAT information from the NSLDS will be more efficient and less burdensome for institutions of higher education that participate in Title IV programs than the existing process of requesting the return of paper FATs from the previously attended institution. In addition, the use of the NSLDS by institutions provides significant burden reduction to students. The use of the NSLDS for the purpose of obtaining FAT information will eliminate paper forms and the need for schools and students to handle millions of paper FATs each year, significantly reducing delays in processing and the change of data error.

General Information

Using the information from the NSLDS will allow schools to meet the regulatory requirements for obtaining FAT information for those Federal student aid applicants who have previously attended other eligible postsecondary institutions, with the exception of mid-year transfer students. Schools may obtain FAT information from the NSLDS through several methods, including the Student Aid Report (SAR) and the NSLDS History section of the Institutional Student Information Record (ISIR). Once a school has obtained historial financial aid information from the NSLDS, including the information on a student's SAR or in the ISIR, it will not be required to re-check the NSLDS prior to disbursing Title IV student assistance. The Question and Answer section of Dear Colleague letter GEN–96–13 describes in detail how the NSLDS may be used for FAT purposes. Schools are reminded that the requirement that they respond to requests for FAT information from other institutions in accordance with section 668.19(b), (c), and (d) of the regulations remains in effect.

Applicable Regulations

The following regulations are applicable to these programs:

General Provisions—34 CFR part 668.
Federal Family Educational Loan—34 CFR part 682.
Federal Perkins Loan—34 CFR part 674.
Federal Direct Student Loan—34 CFR part 685.
Federal Pell Grant Program—34 CFR part 690.
Federal Work-Study Program—34 CFR part 675.
Federal Supplemental Educational Opportunity Grant Program—34 CFR part 676.

FOR FURTHER INFORMATION CONTACT: Greg Gerrans, Program Specialist, Policy Development Division, Policy, Training and Analysis Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, DC 20202–5447. Telephone (202) 708–4607. 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 standard time, Monday through Friday.

Authority: 20 U.S.C. 1091, 1092b, 1094.

Dated: September 10, 1996.

(Catalog of Federal Domestic Assistance Numbers: Federal Supplemental Educational Opportunity Grant Program, 84.007; Federal Stafford Loan Program, 84.032; Federal PLUS Loan Program, 84.032; Federal Work-Study Program, 84.033; Federal Perkins Loan Program, 84.038; Federal Pell Grant Program, 84.063)

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–23801 Filed 9–16–96; 8:45 am]

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Tuesday
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Part VI

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations. These technical amendments are necessary to clarify the regulations and to remove the procedural requirement that recipient institutions include in any request for funds the Catalog of Federal Domestic Assistance (CFDA) number identifying the source of the funds and the amount of funds sought for each program included in the request. The Secretary takes action to defer this change in light of the information technology currently available to recipient institutions and the Department.

EFFECTIVE DATE: These regulations take effect on October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, SW., ROB–3, room 3045, Washington, DC 20202–5346. Telephone: (202) 708–7888. 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 668.163 (Requesting funds) contains a requirement that each institution include in any request for cash the CFDA number identifying the source of the requested funds and the amount of funds for each program for which funds are sought in the request (61 FR 61796; December 1, 1995). The Secretary has continued to evaluate methods of requesting funds in light of refinements in information technology now available to recipient institutions and to the Department, and has decided to defer any change in this aspect of the procedure for requesting cash until future award years. At that time, the Secretary plans to make available to institutions a more precise yet easily used request method that will better identify the program authorization under which funds are requested. The procedural requirement for identification by CFDA number will therefore no longer be necessary.

Changes to § 668.163(a)(3) were previously made in regulations promulgated on June 30, 1995 (60 FR 34432) with the expressed intent of clarifying the procedures for payment under the reimbursement funding method. The language adopted there unfortunately suggested that the procedures had been changed rather than merely clarified. Under the reimbursement funding method, the Department reimburses an institution for the amounts the institution has expended by disbursing its own funds for the purpose of providing grant, loan, or work study assistance to its students under Title IV of the Higher Education Act of 1965, as amended (HEA). That disbursement may be made, as provided in program regulations, either by check or by credit to the student's account for tuition and other charges then owed, or, with the consent of the student, for later payment to the student. Until the disbursement has been made, however, the institution has no reimbursement claim against the Department. The revised language, which referred to the disbursements as those that the institution ''will'' make immediately after receiving payment from the Department was intended to reference situations where the institution had credited student accounts but not yet paid the student. This revised language did not accurately describe this procedure. The Secretary therefore corrects § 668.163(a)(3) to restore a description of reimbursement requirements as they have been consistently understood and applied by the Department.

Under those reimbursement procedures, the institution has been required to disburse fully any amounts for which it seeks reimbursement, including amounts paid to students directly or credited, by student consent, to their accounts for later payment. For reimbursement purposes, however, the Secretary now considers an institution to have made a disbursement for which a reimbursement claim is authorized when the institution has credited the student's account for later payment to the student. The Secretary recognizes the propriety of this claim because of the nature of the obligation the institution incurs by making that credit. By crediting the student's account, the institution incurs a legal obligation to pay the student the amount credited, to the extent that the student remains eligible. The institution remains legally obligated to make that payment even if, by the process of administrative offset, the Department applies funds otherwise payable to the institution for that approved reimbursement claim to satisfy a debt owed by the institution.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Secretary has determined that these amendments to § 668.163(a) to revise and clarify the procedure for presenting cash requests to the Department are procedural rules under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) and do not require publication for public comment.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the Title IV programs under the HEA. These regulations, however, would not have a significant impact on any entities affected. They do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations clarify existing requirements and relieve unnecessary regulatory burden.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: September 12, 1996.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number not applicable.)

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.163 is amended by removing paragraph (a)(2)(iii) and revising paragraph (a)(3) to read as follows:

§ 668.163 Requesting funds.

(a) * * *

(3) *Reimbursement payment method.* Under the reimbursement payment method—

(i) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(ii) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(iii) As part of the institution's reimbursement request, the Secretary requires the institution to—

(A) Identify the students for whom reimbursement is sought; and

(B) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(iv) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution—

(A) Accurately determined the student's eligibility for title IV, HEA program funds;

(B) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(C) Submitted the documentation required under paragraph (a)(3)(iii) of this section.

* * * * *

[FR Doc. 96–23853 Filed 9–16–96; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Animal drugs, feeds, and related products:

New drug applications--

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Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

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PERSONNEL MANAGEMENT OFFICE

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Federal Aviation Administration

Airworthiness directives:

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Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

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Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 9-27-96; published 8-28-96

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Animal and Plant Health Inspection Service

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Federal Crop Insurance Corporation

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Food Safety and Inspection Service

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Contractor gratuities to government personnel; comments due by 9-24-96; published 7-26-96

Contractor overhead rates; settlement process; comments due by 9-27-96; published 7-29-96

EDUCATION DEPARTMENT

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