9–18–96
Vol. 61 No. 182
Pages 49045–49236

Wednesday
September 18, 1996

federal register

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

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 61, No. 182

Wednesday, September 18, 1996

Agency for International Development
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 49154

Agricultural Marketing Service
RULES
Limes and avocados grown in Florida, 49050–49051
PROPOSED RULES
Milk marketing orders:
New England et al., 49081–49086
Oranges and grapefruit grown in Texas, 49078–49080

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 49109

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 49117

Army Department
RULES
Military traffic management:
Air freight forwarders; qualification standards, 49060–49063
NOTICES
Meetings:
Historical Advisory Committee, 49117

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49145–49147
Cabin exposure assessment for study of reproductive outcomes among female flight attendants; NIOSH meeting, 49147
Meetings:
Tuberculosis Elimination Advisory Council, 49147

Coast Guard
RULES
Drawbridge operations:
Louisiana, 49064

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 49111–49112

Commodity Credit Corporation
RULES
Federal Agriculture Improvement and Reform Act of 1996:
Farm program provisions implementation
Correction, 49049–49050

Customs Service
RULES
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension, 49058–49059

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency
NOTICES
Arms sales notification; transmittal letter, etc., 49113–49117

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 49117

Drug Enforcement Administration
PROPOSED RULES
Manufacturers, distributors, and dispensers of controlled substances; registration, etc.:
Controlled substances to ocean vessels, guidelines for providing, 49086–49087

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49119

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), 49119–49120
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Southwestern Public Service Co., 49120
University of Minnesota, 49120–49121

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Florida, 49064–49066
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Arizona, 49087–49090
Florida, 49090–49091
Clean Air Act:
State operating permits programs—
Alaska, 49091–49103

NOTICES
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 49135

Executive Office of the President
See Presidential Documents

Farm Service Agency
RULES
Federal Agriculture Improvement and Reform Act of 1996:
Farm program provisions implementation
Correction, 49049–49050

Federal Aviation Administration
RULES
Airworthiness directives:
Bombardier, 49056–49058
Fokker, 49051–49053, 49055–49056
Hamilton Standard; correction, 49058
Weatherly Aviation Co., Inc., 49053–49055

Federal Communications Commission
RULES
Radio services, special:
Interactive video and data service, 49066–49076
PROPOSED RULES
Radio services, special:
Interactive video and data service, 49103–49108
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49135–49136
Reporting and recordkeeping requirements, 49136–49139

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
North Carolina, 49139, 49140
Virginia, 49140

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49121–49122
Electric rate and corporate regulation filings:
Liberty Power Ltd. et al., 49125
Southern Company Services, Inc., et al., 49125–49127
Interstate natural gas pipelines; business practices standards, 49127–49128
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 49122
Granite State Gas Transmission, Inc., 49122
Growth Unlimited Investments, Inc., 49122
Koch Gateway Pipeline Co., 49122–49123
Mid Louisiana Gas Co., 49123
NUI Energy Brokers, Inc., 49123–49124
Orange & Rockland Utilities Inc., 49124
Texas Gas Transmission Corp., 49124
Transcontinental Gas Pipe Line Corp., 49124
Williston Basin Interstate Pipeline Co., 49124
Wyoming Interstate Co., Ltd., 49125

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Maricopa County, AZ, 49187
Infrastructure investments; life-cycle cost analysis; policy statement, 49187–49191

Federal Procurement Policy Office
PROPOSED RULES
Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting practices changes, 49196–49209

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 49140
Formations, acquisitions, and mergers, 49140–49141
Meetings; Sunshine Act, 49141

Federal Trade Commission
NOTICES
Prohibited trade practices:
Hyde Athletic Industries, Inc., 49141–49143
New Balance Athletic Shoe, Inc., 49143–49145

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49192–49193

Fish and Wildlife Service
RULES
Migratory bird hunting:
Annual hunting regulations; and special youth waterfowl hunting day establishment, 49232–49235
NOTICES
Endangered and threatened species permit applications, 49150–49151
Environmental statements; availability, etc.:
Incidental take permits—
Fort Morgan Peninsula, AL; Alabama beach mouse, 49151–49152

Food and Drug Administration
NOTICES
Biological products licenses:
Pasca Plasma Center, Inc., 49147–49148

Forest Service
NOTICES
Environmental statements; availability, etc.:
Tonto National Forest, AZ; State Highway 87 withdrawal; meeting, 49109
Umpqua National Forest, OR, 49109–49110

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 49128–49135

Indian Affairs Bureau
RULES
Indian Self-Determination and Education Assistance Act program:
Contracts, grants, school construction contracts, etc.; CFR parts removed; Federal regulatory reform, 49059–49060

NOTICES
Liquor and tobacco sale or distribution ordinance:
Cow Creek Bank of Umpqua Tribe of Indians, 49152–49154

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 49112
Applications, hearings, determinations, etc.:
Arizona State University, 49112
University of—
California et al., 49113

International Trade Commission
NOTICES
Import investigations:
Plastic encapsulated integrated circuits, 49154–49155

Justice Department
See Drug Enforcement Administration
See Parole Commission

Labor Department
See Pension and Welfare Benefits Administration

Management and Budget Office
See Federal Procurement Policy Office

Merit Systems Protection Board
RULES
Practice and procedure:
Civil monetary penalty assessment against Federal employee in disciplinary action brought by Special Counsel, 49049

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 49148–49149
Meetings:
National Institute of Environmental Health Sciences, 49149–49150
National Institute of Mental Health, 49149
National Institute of Nursing Research, 49150
National Institute on Aging, 49149, 49150

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 49076–49077

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Florida Power & Light Co., 49176–49178

Parole Commission
NOTICES
Meetings; Sunshine Act, 49155

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Dimensional Fund Advisors, Inc., et al., 49155–49171
Westinghouse Savannah River Co./Bechtel Savannah River, Inc., et al., 49171–49176

Personnel Management Office
NOTICES
Agriculture Department; alternative personnel management system; demonstration project, 49178

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal termination, etc.
Bioethics Advisory Commission, National; amendment (EO 13018), 49045
ADMINISTRATIVE ORDERS
Angola, National Union for the Total Independence of (UNITA); continuation of emergency with U.S. (Notice of September 16, 1996), 49047

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 49184
Reports; availability, etc.:
Capital Formation and Regulatory Processes Advisory Committee; Securities Act concepts and their effects on capital formation, 49184
Securities:
Suspension of trading—
JDMC Global Corp., 49184
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 49185–49186
Applications, hearings, determinations, etc.:
Allianz Life Insurance Co. of North America et al., 49178–49181
Fountain Powerboat Industries, Inc., 49181–49182
Metropolitan Life Insurance Co. et al., 49182–49184

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 49186–49187

Surface Transportation Board
NOTICES
Meetings; Sunshine Act, 49191
Railroad operation, acquisition, construction, etc.:
Sacramento-Placerville Transportation Corridor Joint Powers Authority, 49191
Railroad services abandonment:
Lamoille Valley Railroad Co., 49191–49192

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 49187

Treasury Department
See Customs Service
See Fiscal Service
NOTICES
Meetings:
Customs Service Commercial Operations Advisory Committee, 49192

Separate Parts In This Issue

Part II
Office of Management and Budget, Federal Procurement Policy Office, 49196–49229

Part III
Department of the Interior, Fish and Wildlife Service, 49232–49235

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

12865 (Continued by Notice of Sept. 16).....49047
12975 (Amended by EO 13018).....49045

Administrative Orders:

Notice of September 16, 1996.....49047

5 CFR

1201.....49049

7 CFR

718.....49049
911.....49050
915.....49050
1412.....49049

Proposed Rules:

906.....49078
1001.....49081
1002.....49081
1004.....49081
1005.....49081
1006.....49081
1007.....49081
1011.....49081
1012.....49081
1013.....49081
1030.....49081
1032.....49081
1033.....49081
1036.....49081
1040.....49081
1044.....49081
1046.....49081
1049.....49081
1050.....49081
1064.....49081
1065.....49081
1068.....49081
1075.....49081
1076.....49081
1079.....49081
1106.....49081
1124.....49081
1126.....49081
1131.....49081
1134.....49081
1135.....49081
1137.....49081
1138.....49081
1139.....49081

14 CFR

39 (5 documents).....49051, 49053, 49055, 49056, 49058

19 CFR

101.....49058

21 CFR

Proposed Rules:

1301.....49086

25 CFR

271.....49059
272.....49059
274.....49059
277.....49059
278.....49059

32 CFR

619.....49060

33 CFR

117.....49064

40 CFR

52.....49064

Proposed Rules:

52 (2 documents).....49087, 49090
61.....49091
63.....49091
70.....49091

47 CFR

1.....49066
95.....49066

Proposed Rules:

1.....49103
95.....49103

48 CFR

Proposed Rules:

9903.....49196

50 CFR

20.....49231
679.....49076

Federal Register
Vol. 61, No. 182
Wednesday, September 18, 1996

Presidential Documents

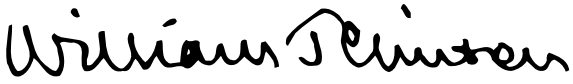
Title 3—

The President

Executive Order 13018 of September 16, 1996

Amending Executive Order No. 12975

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to add 3 members to the National Bioethics Advisory Commission, it is hereby ordered that the number ''15'' in the second sentence of section 3(a) of Executive Order No. 12975 is deleted and the number ''18'' is inserted in lieu thereof.



THE WHITE HOUSE,
September 16, 1996.

[FR Doc. 96–24048
Filed 9–17–96; 8:45 am]
Billing code 3195–01–P

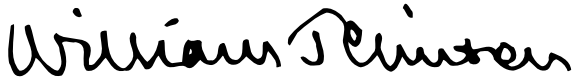
Presidential Documents

Notice of September 16, 1996

Continuation of Emergency With Respect to UNITA

On September 26, 1993, by Executive Order 12865, I declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the National Union for the Total Independence of Angola (''UNITA''), prohibiting the sale or supply by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of arms and related material of all types, and petroleum and petroleum products to the territory of Angola, other than through designated points of entry. The order also prohibits the sale or supply of such commodities to UNITA. Because of our continuing international obligations and because of the prejudicial effect that discontinuation of the sanctions would have on the Angolan peace process, the national emergency declared on September 26, 1993, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond September 26, 1996. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to UNITA.

This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
September 16, 1996.

[FR Doc. 96–24049
Filed 9–17–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 182
Wednesday, September 18, 1996

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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its rules of practice and procedure to make an inflation adjustment in the amount of the civil monetary penalty it may assess against a Federal employee in a disciplinary action brought by the Special Counsel. This adjustment is required by the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Pub.L. 101–410), as amended by the ''Debt Collection Improvement Act of 1996'' (Pub.L. 104–134).

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, 202–653–7200.

SUPPLEMENTARY INFORMATION: Section 4 of the ''Federal Civil Penalties Inflation Adjustment Act of 1990'' (Pub. L. 101–410), as amended by the ''Debt Collection Improvement Act of 1996'' (Pub. L. 104–134), requires each Federal agency with statutory authority to assess a civil monetary penalty (CMP) to adjust each CMP by the inflation adjustment described in section 5 of the Act. Such adjustment is to be made by regulation published in the Federal Register. The first inflation adjustment is required by October 23, 1996—180 days after the enactment of the ''Debt Collection Improvement Act of 1996.'' Thereafter, agencies are to make inflation adjustments by regulation at least once every four years. Any increase in a CMP made pursuant to the Act applies only to violations that occur after the date the increase takes effect.

The Merit Systems Protection Board's only statutory authority to assess a CMP is found at 5 U.S.C. 1215(a)(3), which describes the penalties the Board may impose when it orders disciplinary action against a Federal employee in a complaint brought by the Special Counsel (other than a disciplinary action complaint for violation of the Hatch Act). One of the penalties authorized is assessment of a civil penalty not to exceed $1,000.

Because the Act limits the initial inflation adjustment in a CMP to 10 percent of the penalty specified by statute, the Board is amending its rules at 5 CFR 1201.126(c) to increase the maximum civil penalty it may assess in a Special Counsel disciplinary action to $1,100.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

§ 1201.126 [Amended]

2. Section 1201.126 is amended at paragraph (c) by removing ''$1,000'' and by adding in its place ''$1,100.''

Dated: September 6, 1996.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 96–23209 Filed 9–17–96; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AE81

Implementation of the Farm Program Provisions of the 1996 Farm Bill; Correction

AGENCY: Farm Service Agency and Commodity Credit Corporation, Department of Agriculture.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations which were published on Thursday, July 18, 1996, (61 FR 37544).

EFFECTIVE DATE: September 17, 1996.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections were published on July 18, 1996, at 61 FR 37544, and provide the rules for a variety of programs administered by the United States Department of Agriculture under the authority of the Federal Agriculture Improvement and Reform Act of 1996 (7 USC 7201 *et seq.*).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 18, 1996, 61 FR 37544 *et seq.*, of the final regulations are corrected as follows:

§ 718.206 [Corrected]

On page 37561, in the third column, in § 718.206, line ten, the reference to ''§ 718.204(a)(3).'' is corrected to read ''§ 718.204.''.

§ 1412.206(d) [Corrected]

On page 37578, in the second column, under the reference to Mississippi in § 1412.206(d), line one, ''Covington, Holmes, Jefferson Davis,'' is corrected to read ''Covington, Jefferson Davis,''.

On page 37578, in the third column, under the reference to Oklahoma in § 1412.206(d), line six, ''Jackson, Kay,'' is corrected to read ''Jackson, Jefferson, Kay,''.

On page 37578, in the third column, under the reference to Texas in § 1412.206(d), line four, ''Dallam,'' is corrected to read ''Dallam, Dawson,''.

On page 37579, in the first column, under the reference to Texas in § 1412.206(d), line three, ''Lubbock,'' is corrected to read ''Lubbock, Lynn,''.

On page 37579, in the first column, under the reference to Texas in § 1412.206(d), line five, ''Oldam,'' is corrected to read ''Oldham,''.

§ 1412.206(f) [Corrected]

On page 37579, in the second column in § 1412.206(f), line twenty-eight, the reference to ''kale, kamut, kenya,'' is corrected to read ''kale, kenya,''.

§ 1412.207(b) [Corrected]

On page 37579, in the third column, in § 1412.207(b), line five, the reference to ''§ 1412.303,'' is corrected to read ''§ 1412.304,''.

§ 1412.207(d)(1) [Corrected]

On page 37579, in the third column, in § 1412.207(d)(1), line one, ''August 31'' is corrected to read ''September 30''.

§ 1412.207(d)(2) [Corrected]

On page 37579, in the third column, in § 1412.207(d)(2), line two, ''August 31'' is corrected to read ''September 30''.

§ 1412.401 [Corrected]

On page 37580, in the second column, in § 1412.401(a), line five, the reference to ''§§ 1412.201(6)(c),'' is corrected to read ''§§ 1412.206(c),''.

On page 37580, in the third column, in § 1412.401(b)(2)(iii), line one, ''(iii) Producers'' is corrected to read ''(c) Producers''.

§ 1412.403 [Corrected]

On page 37580, in the third column, in § 1412.403, line one, the reference to ''§ 718.12'' is corrected to read ''§ 718.11''.

§ 1412.407 [Corrected]

On page 37581, in the first column, in § 1412.407, line ten, the reference to ''§ 1412.40(b)(1) and (2)'' is corrected to read ''§ 1412.401(b)(1) and (2)''.

Signed at Washington, D.C., on September 10, 1996.

Grant Buntrock,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–23834 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV96–911–4FIR]

Limes and Avocados Grown in Florida; Relaxation of Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule relaxing the container marking requirements prescribed under the Federal marketing orders for limes and avocados grown in Florida. The marketing orders regulate the handling of limes and avocados grown in Florida and are administered locally by the Lime and Avocado Administrative Committees (committees). This relaxation reduces the number of lime and avocado containers required to be marked with a lot stamp number. This rule reduces handling costs and provides more flexibility in lime and avocado packing operations.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770; Fax # (941) 299–5169; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; Fax # (202) 720–5689. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 911 and 915 (7 CFR parts 911 and 915), as amended, regulating the handling of limes and avocados grown in Florida, hereinafter referred to as the ''orders.'' These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 10 handlers of limes and 65 handlers of avocados who are subject to regulation under the respective marketing order and approximately 115 lime and 165 avocado producers in the regulated areas. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of these handlers and producers may be classified as small entities.

This rule relaxes the lot stamping requirements on containers of limes and avocadoes that have been palletized prior to block inspection. Smaller handling facilities are the primary users of block inspection and will benefit from the cost savings of this relaxation. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Under the terms of the marketing orders, fresh market shipments of Florida limes and avocados are required to be inspected and are subject to grade, size, maturity, pack and container requirements. Prior to the effective date of the interim final rule, container requirements included specifications that all authorized containers of limes and avocados be plainly marked with a

Federal-State Inspection lot stamp number corresponding to the lot inspection conducted by an authorized inspector.

This rule finalizes changes to the container marking requirements under the orders. This rule relaxes the lot stamping requirements on containers of limes and avocados that have been palletized prior to block inspections. These changes were unanimously recommended by the committees on March 13, 1996.

The interim final rule was issued on June 13, 1996, and published in the Federal Register (61 FR 31004, June 19, 1996), with an effective date of June 20, 1996. That rule amended §§ 911.311(b) and 915.306(a)(4)(5) of the rules and regulations in effect under the orders. That rule provided a 30-day comment period which ended July 19, 1996. No comments were received.

Sections 911.48 and 915.51 of the lime and avocado marketing orders provide authority for the establishment of container marking requirements. Sections 911.311(b) and 915.306(a)(4)(5) of the rules and regulations outline the lot stamp number container marking requirements for fresh limes and avocados packed under the orders.

There are two basic types of inspection in the industry; in-line and block. In-line inspection is performed during the packing process, prior to palletization and storage. In block inspection, the inspection occurs after the pallets have been packed, strapped, and placed in storage. Large handling facilities tend to have inspectors on site when they are packing. These facilities use in-line inspection which allows the containers to be lot stamped prior to being palletized. Smaller handling facilities do not run enough fruit to justify the continuous presence of an inspector. Therefore, they call for a block inspection after a lot is run, palletized and ready to ship. Requiring the inspector to lot stamp each container necessitates tearing down all the pallets. This results in significant cost and loss of time.

The committees recommended relaxing the number of containers required to be marked with the lot stamp number to assist small handlers. This relaxation revises the lot stamping requirements for containers that have been palletized prior to inspection. Under this change, all exterior, exposed boxes, on all four sides of a pallet, are lot stamped, rather than each box. The committees anticipate that this recommended relaxation will avoid prohibitive costs to small handlers.

Less than 25 percent of all lime and avocado shipments are shipped by small packing houses using block inspection. Under this revised procedure, most of the containers they pack will be lot stamp numbered. The center tiers of randomly selected pallets are inspected by the Federal-State Inspection Service for all marketing order requirements. The committees' recommendation to relax the container marking requirement would not lower the number of containers being inspected.

Several other alternatives were suggested during the public meetings. One alternative discussed by the committees was to require all containers to continue to be lot stamp numbered. Maintaining the requirement for lot stamp numbers to be placed on all containers would not address the burden placed on small handlers. That burden includes higher handler labor costs, slower handler operations, increased handler restrapping costs, as well as increased inspection costs. It was the consensus of the committees that the requirement that all containers be marked is cost prohibitive as each block-inspected pallet needs to be manually pulled apart to enable the lot stamp number to be placed on the center tier containers.

Another alternative suggested was to eliminate the block-inspection method and require all handlers to use the in-line inspection method. During in-line inspection, containers would be stamped with the lot stamp number prior to being stacked on the pallet. This would have a serious financial impact on the industry, especially among small handlers, due to a large increase in inspection costs. This suggestion was unacceptable to the industry as it would be cost prohibitive and could force small handlers out of business.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including limes and avocados, imports of that commodity must meet the same or comparable requirements. This rule changes the container marking requirements currently issued under the orders. Therefore, no change is necessary in the lime and avocado import regulations as a result of this action to relax the lot stamp number requirement.

After consideration of all relevant material presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 31004, June 19, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 911

Marketing agreements, Limes, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 61 FR 31004 on June 19, 1996, is adopted as a final rule without change.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 61 FR 31004 on June 19, 1996, is adopted as a final rule without change.

Dated: September 9, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23824 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–252–AD; Amendment 39–9760; AD 96–19–14]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of certain flexible oxygen hoses, located in the flight compartment gangway and in the consoles, with insulated hose assemblies. This amendment is prompted by reports of either insufficient or no clearance between these hoses and adjacent structure or electrical wiring. The actions specified by this AD are intended to prevent chafing of the

flexible oxygen hoses, which could result in an uncontrollable loss of oxygen from the flightcrew oxygen system, and could allow the presence of oxygen in areas where ignition is possible.

DATES: Effective October 23, 1996.

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

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on March 28, 1996 (61 FR 13791). That action proposed to require replacement of flexible oxygen hoses with insulated hose assemblies.

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Clarify Installation Requirement

One commenter requests that paragraph (b) of the proposed rule, which prohibits installation of a hose assembly with part number (P/N) A66152–417 or A66152–407 on the airplane, be revised to clarify that these flexible hoses may be installed at other locations on the airplane.

The FAA concurs. The intent of the AD was to prohibit the installation of the flexible hoses only in those locations specified in paragraph (a) of the AD, i.e., the flight compartment gangway and the left-hand and right-hand side consoles. Paragraph (b) of the AD has been revised to clarify this intent.

Conclusion

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

Cost Impact

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,376 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $33,936, or $1,616 per airplane.

The cost impact figure discussed above is 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, 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:

96–19–14 Fokker: Amendment 39–9760. Docket 95–NM–252–AD.

Applicability: Model F28 Mark 0100 series airplanes, having serial numbers 11244 through 11321 inclusive, and 11323 through 11332 inclusive; 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 (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 an uncontrollable loss of oxygen from the flightcrew oxygen system due to chafing of the flexible oxygen hoses, which could result in the presence of oxygen in areas where ignition is possible; accomplish the following:

(a) Within 12 months or 3,000 flight cycles after the effective date of this AD, whichever occurs first, replace the flexible oxygen hoses having part number (P/N) A66152–407, located in the left-hand (LH) and right-hand (RH) side consoles with insulated tube assemblies having P/N D66127–401; and replace the flexible oxygen assemblies having P/N A66152–417, located in the flight compartment gangway with insulated tube assemblies having P/N D66127–403; in accordance with Fokker Service Bulletin SBF100–35–004, dated May 17, 1995.

(b) As of the effective date of this AD, no person shall install a hose assembly with P/N A66152–417 or A66152–407, in the flight compartment gangway or in the LH or RH side consoles of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

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

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

(e) The replacements shall be done in accordance with Fokker Service Bulletin SBF100–35–004, dated May 17, 1995. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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.

(f) This amendment becomes effective on October 23, 1996.

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

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23711 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–42–AD; Amendment 39–9763; AD 96–16–06]

RIN 2120–AA64

Airworthiness Directives; Weatherly Aviation Company, Inc., Models 620A and 620B Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 96–16–06, which was sent previously to all known U.S. owners and operators of certain Weatherly Aviation Company, Inc., (Weatherly) Models 620A and 620B airplanes. This AD requires inspecting all wing hinge pins, part number (P/N) 40852–001, at the main wing-to-center section attachment (four per airplane) for depth of the threaded ends, length of the pin, and position of the pin; and replacing or repositioning any pin, as necessary. A report received by the Federal Aviation Administration of manufacturing deficiencies at the area of the main wing center section attachment prompted the AD. The actions specified by this AD are intended to prevent failure of the wing hinge pin, which could result in the wing separating from the fuselage.

DATES: Effective October 6, 1996, to all persons except those to whom it was made immediately effective by priority letter AD 96–16–06, issued July 26, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1996.

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

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Weatherly Aviation Company, Inc., 2100 Flightline Drive, suite 1, P.O. Box 68, Lincoln, California 95648. This information may also be examined at the Rules Docket at the address above, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Roberts, Aerospace Engineer, Los Angeles ACO, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5228.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

The FAA received a report of manufacturing deficiencies on certain Weatherly Models 620A and 620B airplanes. In particular:

—the wing hinge pins, part number (P/N) 40852–001, at the main wing spar wing-to-center section attachment could be too short and/or misaligned, which could result in the pins not properly securing the wing to the fuselage for ultimate airplane loads; and

—the threaded ends of the wing hinge pin retaining bolt holes could be drilled too deep, which could result in excessive stress load on the wing hinge pins with subsequent wing hinge pin failure.

Applicable Service Information

Weatherly Aviation Company, Inc., has issued Service Note No. 15, dated July 17, 1996, which specifies procedures for inspecting the P/N 40852–001 wing hinge pins for depth of the threaded ends, overall length, and pin position.

Explanation of the Provisions of This Action

Since an unsafe condition has been identified that is likely to exist or develop in other Weatherly Models 620A and 620B airplanes of the same type design that are equipped with at least one P/N 40852–001 hinge pin from a manufacturing lot that could have the above-referenced quality control problems, the FAA issued priority letter AD 96–16–06 on July 26, 1996, to prevent failure of the wing hinge pin. The AD requires inspecting all wing hinge pins, P/N 40852–001, at the main wing-to-center section attachment (four per airplane) for depth of the threaded ends, length of the pin, and position of the pin; and replacing or repositioning any pin, as necessary. Accomplishment of the inspections is in accordance with the instructions in Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 1996. The replacement or repositioning is accomplished in accordance with the applicable maintenance manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 26, 1996 to all known U.S. operators of the following Weatherly model and serial number airplanes:

Model	Serial Nos.
620A	1520 through 1614.
620B	1616 through 1628.

These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to 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 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 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 No. 96–CE–42–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 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 USC 106(g), 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–16–06 Weatherly Aviation Company, Inc.: Amendment 39–9763; Docket No. 96–CE–42–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that are equipped with at least one part number (P/N) 40852–001 hinge pin:

Model	Serial Nos.
620A	1520 through 1614.
620B	1616 through 1628.

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 (d) 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 prior to further flight after the effective date of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued July 26, 1996, which made these actions effective immediately upon receipt.

To prevent failure of the wing hinge pin, which could result in the wing separating from the fuselage, accomplish the following:

(a) Inspect the wing hinge pins, P/N 40852–001, at the main spar wing-to-center section attachment (four per airplane) for the following in accordance with the instructions in Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 1996:

(1) Inspect for the depth of the threaded ends per figure 1 of Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 1996. If the depth exceeds .84 inches, prior to further flight, replace the pin in accordance with the applicable maintenance manual.

(2) Inspect for the overall length per figure 1 of Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 1996. If the length is less than 3.06 inches, prior to further flight, replace the pin in accordance with the applicable maintenance manual.

(3) Inspect the position of the pin to ensure it is centered in the spar hinges. If the pin position is not centered in the spar hinges, prior to further flight, center the pin and tighten the cap retainer bolts evenly as specified in Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 1996, and in accordance with the applicable maintenance manual.

Note 2: Although not required by this AD, it is encouraged that all pins that require replacement be returned to the Weatherly Aviation Company, Inc., 2100 Flightline Drive, suite 1, P.O. Box 68, Lincoln, California 95648.

(b) Send the results of the inspection required by paragraph (a) of this AD within 10 calendar days after the inspection to the Manager, Los Angeles Aircraft Certification Office (ACO), Attention: W. Roberts, FAA, 3960 Paramount Boulevard, Lakewood, California 90712–4137. Include the airplane serial number, and the condition and number of hours time-in-service of each deficient wing hinge pin at the time of inspection. (Reporting approved by the Office of Management and Budget under OMB no. 2120–0056.)

(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. The hopper must be empty during this flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles ACO, at the address specified in paragraph (b) of this AD. The request shall be forwarded through an appropriate FAA 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.

(e) The inspections required by this AD shall be done in accordance with Weatherly Aviation Company, Inc., Service Note No. 15, dated July 17, 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 the Weatherly Aviation Company, Inc., 2100 Flightline Drive, suite 1, P.O. Box 68, Lincoln, California 95648. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal

Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment (39–9763) becomes effective on October 6, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96–16–06, issued July 26, 1996, which contained the requirements of this amendment.

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

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23715 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–249–AD; Amendment 39–9758; AD 96–19–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires inspection and adjustment of the torque value of the attaching parts of the interlock mechanism of the large cargo doors, removal of a spring from that mechanism, and installation of a new microswitch bracket. This amendment is prompted by a report indicating that a spring on the interlock lever of the large cargo doors may become disconnected or the lever may become jammed in the ''activated'' state. The actions specified by this AD are intended to prevent the spring from becoming disconnected or the lever from jamming. If other failures occur, the flightcrew could dispatch the airplane with improperly locked cargo doors; this condition could result in the opening and/or separation of the cargo doors while the airplane is in flight and subsequent rapid decompression and/or structural damage to the airplane.

DATES: Effective October 23, 1996.

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

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on July 19, 1995 (60 FR 37038). For certain airplanes, that action proposed to require an inspection to determine the torque value of the attaching parts of the interlock mechanism of the large cargo doors, and adjustment of the torque values that are outside certain limits. For other airplanes, the action proposed to require removal of a spring from the interlock mechanism of the large cargo doors, and installation of a new microswitch bracket and two new springs in the interlock mechanism.

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

Support for the Proposal

One commenter supports the proposed rule.

Request for Extension of Compliance Time

One commenter requests that the compliance time for the proposed actions be extended from the proposed 6 months to 12 months. This commenter, a U.S. operator, states that its fleet includes 40 of the 61 U.S.-registered airplanes that would be affected by the rule. Extending the compliance time to 12 months will allow the commenter to accomplish the required modifications during a scheduled ''C'' check, when the airplanes are brought to the main maintenance base for an extended hold. Adoption of the proposed 6-month compliance time would require that this commenter special-schedule its airplanes for the accomplishment of the modification at stations other than the main base; however, adoption of a 12-month compliance time would allow this commenter's fleet to be modified at the same place and by the same technicians familiar with the task.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this AD, the FAA considered not only the safety implications, but the manufacturer's recommendations, the Dutch airworthiness authority's recommendations, the availability of required parts, and the practical aspect of accomplishing the modification within an interval of time that parallels normal scheduled maintenance for affected operators. The FAA also considered the fact that the referenced Fokker service bulletin (containing the procedures for accomplishing the required actions) has been available to all operators of Fokker Model F28 Mark 0100 series airplanes since August 1993; therefore, U.S. operators have had ample time since then to consider initiating those actions, which this AD ultimately mandates. In light of all of these items, the FAA finds that 6 months is the appropriate period of time that affected airplanes can be permitted to continue to operate without compromising safety. Under the provisions of paragraph (b) of the final rule, however, the FAA may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

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.

Cost Impact

The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD.

For 7 of these airplanes, it will take approximately 6 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators of these airplanes is estimated to be $2,520, or $360 per airplane.

For the other 54 airplanes, it will take approximately 12 work hours per airplane to accomplish the required removal and installation, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,200 per airplane. Based on these figures, the cost impact of the removal and installation required by this AD on U.S. operators of these airplanes is estimated to be $103,680, or $1,920 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, 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:

96–19–12 Fokker: Amendment 39–9758. Docket 94–NM–249–AD.

Applicability: Model F28 Mark 0100 series airplanes; as listed in Fokker Service Bulletin SBF100–52–045, dated August 25, 1993; 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 the opening and/or separation of the large cargo doors while the airplane is in flight, which could result in rapid decompression and/or structural damage to the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Fokker Service Bulletin SBF100–52–045, dated August 25, 1993.

(1) For airplanes having serial numbers listed in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–045, dated August 25, 1993: Perform an inspection to determine the torque value of the attaching parts of the interlock mechanism of the large cargo doors, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. If the torque value is outside the limits specified in paragraphs 2.C.(1) and 2.C.(2) of the Accomplishment Instructions of the service bulletin, prior to further flight, adjust the torque value in accordance with the service bulletin.

(2) For airplanes having serial numbers listed in Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–045, dated August 25, 1993: Remove the spring from the interlock mechanism, and install a new microswitch bracket and new springs in the interlock mechanism, in accordance with Part 2 of the Accomplishment Instructions of the 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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

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

(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 Fokker Service Bulletin SBF100–52–045, dated August 25, 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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 23, 1996.

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

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23714 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–247–AD; Amendment 39–9761; AD 96–19–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–601–3A and –3R) and CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B16 and CL–600–2B19 series airplanes, that requires a one-time inspection of the spring bungee assembly of the nose landing gear (NLG) to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable unit, if necessary. This amendment is prompted by reports of failure of the NLG to extend when the landing gear selector was placed in the ''DOWN'' position, and failure of the NLG doors to open when the NLG door switch was set in the ''SAFETY/DOOR OPEN'' position; these conditions may have been caused by a reduced stroke of the spring bungee. The actions specified by this AD are intended to prevent improper operation of the NLG door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee.

DATES: Effective October 23, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of Octber 23, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7509; fax (516) 568–2716.

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 Bombardier Model CL–600–2B16 and CL–600–2B19 series airplanes was published in the Federal Register on July 8, 1996 (61 FR 35691). That action proposed to require a one-time inspection of the spring bungee assembly of the nose landing gear (NLG) to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable (new or reworked) unit, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 101 Bombardier Model CL–600–2B16 and CL–600–2B19 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $24,240, or $240 per airplane.

The cost impact figure discussed above is 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, 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:

96–19–15 Bombardier, Inc. (Formerly Canadair): Amendment 39–9761. Docket 95–NM–247–AD.

Applicability: Model CL–600–2B16 (CL–601–3A and –3R), serial numbers 5100 through 5166, inclusive; and Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7048, inclusive; 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 (d) 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 improper operation of the nose landing gear (NLG) door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee; in accordance with Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision ''A,'' dated December 2, 1994 (for Model CL–600–2B19 series airplanes); or Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995 (for Model CL–600–2B16 series airplanes); as applicable.

(b) If improper torque of the collar is found, or if incorrect clearance between the collar and the body of the bungee is found: Prior to further flight, replace the spring bungee assembly with a serviceable (new or reworked) unit that has been inspected in accordance with Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision ''A,'' dated December 2, 1994 (for Model CL–600–2B19 series airplanes); or Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995 (for Model CL–600–2B16 series airplanes); as applicable. Accomplish the replacement in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install a spring bungee assembly having part number 600–86115–1 (for Model CL–600–2B16 series airplanes) or 600–86115–5/70 (for Model CL–600–2B19 series airplanes) on any airplane unless that assembly has been inspected and reworked, as necessary, in accordance with paragraph (a) of this AD.

(d) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(e) 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.

(f) The inspection and replacement shall be done in accordance with Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision ''A,'' dated December 2, 1994; or Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 23, 1996.

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

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–23713 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–ANE–04; Amendment 39–9705; AD 96–08–01 R1]

RIN 2120–AA64

Airworthiness Directives; Hamilton Standard Model 14RF–9 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 96–08–01 R1 applicable to Hamilton Standard Model 14RF–9 propellers that was published in the Federal Register on August 2, 1996 (61 FR 40313). The Amendment No. in the header to the Compliance section is incorrect. This document corrects the Amendment No. In all other respects, the original document remains the same.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Hamilton Standard Model 14RF–9 propellers, was published in the Federal Register on August 2, 1996 (61 FR 40313). The following correction is needed:

§ 39.13 [Corrected]

On page 40314, in the third column, in the header to the Compliance Section, in the second line, ''Amendment No. 39–9707'' is corrected to read ''Amendment No. 39–9705''.

Issued in Burlington, MA, on August 26, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–23754 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 96–67]

Extension of Port Limits of Columbus, Ohio

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of Columbus, Ohio, to include Rickenbacker International Airport, which is currently operating as a user fee airport. The boundary expansion of the Columbus port has occurred because of increased business at Rickenbacker International Airport. The Customs Regulations are also being amended to remove Rickenbacker International Airport's designation as a user fee airport. This change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of Columbus, Ohio, to include the territory encompassing Rickenbacker International Airport, which is currently a user fee airport.

Enough business has shifted from within the port to Rickenbacker International Airport to make it worthwhile for Customs to include the airport within the Columbus port boundaries. Customs even plans to relocate its offices to Rickenbacker International Airport.

The Customs Regulations are also being amended to remove Rickenbacker International Airport from the list of user fee airports in § 122.15, Customs Regulations. Customs will use existing staffing to service the expanded area of the port of Columbus, Ohio.

Comments and Analysis

A Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (61 FR 8001) on March 1, 1996, which discussed the proposed extension of the Port of Columbus. As a result of the NPRM, two comments were received.

The comments were from the Columbus Airport Authority and the Department of Trade and Development of the City of Columbus. The comments do not oppose the extension of the port limits of the Port of Columbus, but they are concerned with maintaining the level of Customs services at Port Columbus International Airport.

The Columbus Airport Authority, which operates Port Columbus International Airport where the Customs offices are currently located, requests assurances that there will be no lowering of the current level of services. It also wishes the Customs Service to provide the required services for a projected growth in international flights.

The Department of Trade and Development comment explores the planned long term development of Port Columbus International Airport. The airport expects growth in international service as a result of recent negotiations involving the potential Canadian market for flights to Columbus and as part of its

membership in the United States Airports for Better International Air Service. At the same time, the Department is involved in expanding the capabilities of Rickenbacker International Airport. The Department is concerned with the long term economic viability of both airports.

The Customs Service wishes to emphasize that the extension of the Port of Columbus limits to include Rickenbacker International Airport and the move of the port Customs office to Rickenbacker International Airport will not affect Customs service at either airport. Rickenbacker International Airport was a designated user fee airport. Now that the extension of the Port of Columbus is final, the airport will get regular Customs service. The Port Columbus International Airport will continue to receive its regular Customs service.

The Customs Service assures both commenters that there will be no change in the level of Customs service at either facility. Furthermore, Customs anticipates that it will be able to provide sufficient resources to process the increase in workload foreseen by the commenters.

Conclusion

Inasmuch as the comments are favorable toward the change as long as the current levels of Customs service are maintained and Customs anticipates no change in the level of service at either Rickenbacker International Airport or the Port Columbus International Airport, Customs is proceeding with the amendment.

Port Limits

The previous port limits of the port of Columbus, Ohio, established in Treasury Decision (T.D.) 82–9, included all of the territory within the corporate limits of Columbus, Ohio, all of the territory completely surrounded by the city of Columbus, and all of the territory enclosed by Interstate Highway 270 (outer belt), which completely surrounds the city.

The expanded port limits of Columbus, Ohio, encompass the port limits set forth in T.D. 82–9 as well as the following territory:

Beginning at the intersection of Rohr and Lockbourne Roads, then proceeding southerly along Lockbourne Road to Commerce Street, thence easterly along Commerce Street to its intersection with the N & W railroad tracks, then southerly along the N & W railroad tracks to the Franklin-Pickaway County line, thence easterly along the Franklin-Pickaway County line to its intersection with Pontius Road, then northerly along Pontius Road to its intersection with Rohr Road, thence westerly along Rohr Road to its intersection with Lockbourne Road, the point of beginning, all within the County of Franklin, State of Ohio.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, part 101 and part 122 of the Customs Regulations are amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. Section 101.3(b)(1) is amended by removing the reference ''T.D. 82–9'' in the ''Limits of port'' column adjacent to the entry of Columbus in the ''Ports of entry'' column under the state of Ohio and by adding the reference ''T.D. 96-67'' in its place.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.15 [Amended]

2. The list of user fee airports in § 122.15(b) is amended by removing ''Columbus, Ohio'' from the left column labelled ''Location'' and by removing ''Rickenbacker Airport'' from the adjacent right column labelled ''Name.''

George J. Weise,

Commissioner of Customs.

Approved: August 29, 1996.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–23896 Filed 9–17–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 271, 272, 274, 277, and 278

RIN 1076–AD53

Contracts and Grants; School Construction; Special Grants to Small Tribes; Removal of Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is eliminating of 25 CFR Parts 271, 272, 274, 277 and 278 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, Department of the Interior, Room 4627, 1849 C Street NW, Washington, DC 20240, Telephone (202) 208–3708.

SUPPLEMENTARY INFORMATION: On June 3, 1996, at 61 FR 27833, the Bureau published a proposed rule to eliminate 25 CFR Part 274, School Construction Contracts or Services for Tribally Operated Previously Private Schools; Part 277, School Construction Contracts for Public Schools; and Part 278, Special

Grants for Economic Development and Core Management Grants to Small Tribes. These rules are no longer necessary, as they are being replaced by the new 25 CFR part 900, which implements the Indian Self-Determination and Education Assistance Act. We received no comments in response to the proposed rule.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

This final rule has an effective date of less than 30 days after publication so that it may become effective as close as possible to the effective date of the new rule at 25 CFR part 900. Since part 900 replaces the parts eliminated by this rule, an earlier effective date will minimize the period during which two conflicting rules are in effect at the same time. This will minimize potential confusion among the users of the rules.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

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.).

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it affect private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information: The primary author of this document is Kimberly Toyekoyah, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in

25 CFR Part 271

Indians—tribal government, Indians—contracting.

25 CFR Part 272

Indians—tribal government, Indians—grants.

25 CFR Parts 274 and 277

Indians—school construction.

25 CFR Part 278

Indians—special grants for economic development—core management grants.

Under the authority of Executive Order 12866, and for the reasons stated above, the Parts 271, 272, 274, 277 and 278 are removed from 25 CFR Chapter I.

Dated: August 21, 1996.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 96–23902 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying Department of Defense (DOD), Air Freight Forwarders

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final rule.

SUMMARY: This final rule adds qualification standards for Air Freight Forwarders and establishes a change in the basic agreement between the Military Traffic Management Command and Air Freight Forwarders requirements.

EFFECTIVE DATE: September 18, 1996.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–QQ, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Rick Wirtz, telephone: 703–681–6393.

SUPPLEMENTARY INFORMATION:

a. Background

Basic information on the Carrier Qualification Program was previously published in the Federal Register, 53 FR 17970, 54 FR 27667, 55 FR 7361, 55 FR 52976 and 56 FR 45895 and 57 FR 11376.

b. Comments and Responses

Comment: Carrier objected to providing a list of carriers with who they contract, as per paragraph 609.6 of the proposed rule.

Response: MTMC requires this information in the event the carrier abandons or frustrates the shipment in order to maintain the control to overrule negative decisions made by the forwarders, if the need should arise.

Comment: MTMC should not be able to direct forwarders as to which carriers they can and cannot use.

Response: MTMC is ultimately responsible for the safe and timely delivery of all DOD cargo. In that capacity this organization retains the authority to approve or disapprove all carriers hauling federal freight.

Comment: In general, Air Freight Forwarders do not operate vehicles and therefore do not normally carry Public Liability Insurance.

Response: Code of Federal Regulations 49 387.9 states carriers for hire in interstate or foreign commerce (property) must maintain a minimum limit of $750,000. Due to the volume of carriers that forwarders do business with, MTMC requires $1,000,000 in liability insurance. All carriers participating in the movement of DOD freight will provide this minimum.

Comment: Rules must reflect the fact that Air Freight Forwarders operate on a released-value basis and do not provide full-value protection, unless additional transportation charges are paid.

Response: MTMC requires $250,000 per shipment cargo insurance. Again, due to the high volume of carriers providing transportation services for the forwarders.

Comment: Performance bonds are redundant since cargo losses and damages are covered under cargo insurance, and on-time delivery is covered by reduction in rates to service provided.

Response: The bond secures performance and fulfillment of the

carrier obligation to deliver DOD freight to destination. It will cover DOD reprocurement costs as a result of carrier default, abandoned shipments or bankruptcy. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo.

Comment: If the forwarder changes his name, the SCAC code is nullified and the forwarder can no longer participate. All of the other requirements for notice are really not pertinent and place a paperwork burden on both the forwarder and the Government.

Response: The NMFTA will, in fact, allow a carrier to change their company name and still retain the original SCAC. However, HQMTMC does not allow this within the carrier qualification program.

Comment: Pursuit of claims under Interstate Commerce Act needs clarification as the Air Freight Forwarders Association is not familiar with these claims procedures.

Response: An Air Freight Forwarder, whether domestic or international, is by statute and regulation, an indirect air carrier and hence is liable as a common carrier.

Executive Order 12219

This rule was reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non major. The effect of the rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities. The objective of the program is to ensure that DOD obtains safe, dependable, and reliable transportation services. The requirements are not designed to preclude participation by small businesses. Rather, they are part of a mechanism designed to ensure that traffic offered to small businesses does not exceed their capabilities. The program's reporting and recordkeeping requirements are essentially administrative in nature and do not demand significant expenditures of resources such as personnel, computer equipment, or software. No professional or technical training is necessary to comply with these requirements. Alternatives to facilitate entry of small businesses have been identified and implemented.

Paperwork Reduction Act

This rule is approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in CFR Part 619

Common carriers, Freight, Motor vehicle, Safety, Shipping, Trucks.

Accordingly, part 619 of title 32 of the Code of Federal Regulations is amended by the following changes:

1. The authority citation for part 619 continues to read as follows:

Authority: 49 U.S.C. 1801–1813, 2503, 2505, 2509.

2. Section 619.1 is amended by revising the first sentence to read as follows:

§ 619.1 Introduction.

Carriers, surface freight forwarders, shipper agents, and air freight forwarders interested in or remaining qualified will submit data described in §§ 619.2 through 619.6 to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. * * *

* * * * *

3. Section 619.4 is amended by revising paragraphs (a), (b), introductory text, and (b)(5) to read as follows:

§ 619.4 Insurance-public liability and cargo.

(a) *Public liability.* Motor carriers, surface freight forwarders, shipper agents and air freight forwarders will submit proof of public liability to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates will not be reflected on the certificate, the policy must be continuous until canceled. However, the deductible portion will be shown on the certificate. The insurance underwriters must be rated in Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–QQ, will be notified, in writing, 30 days in advance of any change or cancellation. The public liability requirements are specified in 49 CFR 387.9. Surface freight forwarders and shipper agents will submit proof of $1 million public liability (death and bodily injury, property damage, and environment restoration).

(b) *Cargo.* Motor common carriers, surface freight forwarders, shipper agents and air freight forwarders must have their insurance company provide a certificate of insurance form. The deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies or specifically approved by HQMTMC. DOD's minimum cargo insurance requirements are listed below.

* * * * *

(5) Surface freight forwarders, shipper agents and air freight forwarders—$250,000 per shipment.

4. Section 619.6 is amended by revising the introductory text and paragraph (k) as follows:

§ 619.6 Information.

Motor carriers, surface freight forwarders and shipper agents will provide HQMTMC the following information.

* * * * *

(k) In addition to information contained in (a) through (h) and (j) above, exempt surface freight forwarders, shipper agents and air freight forwarders must furnish a listing of the carriers which they have contract with and intend to use in the movement of government shipments. Information must include the complete company name, company officials to include their position and title, home office address, telephone number, 24-hour emergency point of contact for shipment status, and FHWA operating authority number of each carrier.

5. Section 619.7 is amended by revising paragraph (d) as follows:

§ 619.7 Performance bond.

* * * * *

(d) Surface Freight Forwarders, Shipper Agents and Air Freight Forwarders. Due to the volume of traffic handled by these modes and the area normally serviced, the bond amount is set at $100,000.

* * * * *

6. Section 619.8 is revised to read as follows:

§ 619.8 Basic Agreement.

Motor carriers, surface freight forwarders, shipper agents and air freight forwarders meeting the qualification requirements of §§ 619.1 through 619.7 will be required to sign the appropriate Basic Agreement in the appendices to this part.

7. A new Appendix G is added to part 619 of the appendices as follows:

Appendix G to Part 619—Agreement Between the Military Traffic Management Command and Air Freight Forwarders Governing the Transportation of General Commodities for and on Behalf of the U.S. Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of:

I, _____

(Name of forwarder, typed or legibly printed)

hereinafter referred to as the Forwarder, as a prerequisite for consideration for participation in the transport of general commodities as an exempt Air Freight Forwarder, for the U.S. Department of Defense (DOD), agree to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of the forwarder's privilege to participate in the movement of DOD freight. For the purpose of this Agreement, an Air Freight Forwarder is defined as a person or company who acts as a common carrier. That is, a carrier who holds itself out to the general public to provide transportation of property for compensation, assembles and consolidates less-than-truckload freight, as defined in the Instruction for Preparation of Department of Defense Standard Tender of Freight Services, MT form 364–4 (and revisions thereto), Part II, uses for the whole or any part of the line-haul transportation the services of regulated motor or air carriers, break bulk and delivers the less-than-truckload freight holding out in its own name and under its own responsibility a through transportation service from point of receipt to destination.

2. Approval and Revocation.

a. Forwarder understands that its initial approval and retention of approval are contingent upon establishing and maintaining to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the Forwarder's proposed scope of operations in accordance with the service requirements of the shipper.

b. The Forwarder understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification.

c. In addition to the initial evaluation, the forwarder agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. Forwarder agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC Carrier Review Board (CRB), or placed in non-use by MTMC from doing business with DOD.

3. Lawful Performance.

a. Forwarder agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

b. The Forwarder agrees to keep current and on file a list of all carriers to be used in the transport of DOD freight shipments. This list will contain, as a minimum, the company's name, president/vice president's name(s), operating authority number, corporate office address, telephone number and a designated 24-hour on call point of contact in the event of an accident or emergency situation. MTMC can direct the Forwarder not to use specific carriers in the movement of DOD freight shipments.

c. Forwarder further agrees and certifies that it will only use carriers that are approved through the Carrier Qualification Program (CQP) to transport DOD freight, and will not use any carrier that had been debarred, suspended by the Government or which has been placed in nonuse or disqualified any MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. Operations. Forwarder agrees and certifies that it is operating as a forwarder as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed, Articles of Incorporation, listing all the officers of the corporation is attached and certified to be true, correct and current.

5. Insurance.

a. The Forwarder agrees to maintain a minimum of $1 million public liability insurance and $250,000 cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be on file with MTMC, ATTN: MTOP–QQ prior to any performance of service by the forwarder.

b. The insurance, carried in the name of Forwarder, will be in force at all times while this Agreement is in effect or until such time as the Forwarder cancels all tenders. Forwarder agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by the carrier. The certificate holder block of the form will indicate that MTMC, 5611 Columbia Pike, ATTN: MTOP–QQ, Falls Church, VA 22041-5050, will be notified in writing, 30 days in advance of any change or cancellation. The deductible portion will be shown on the certificate.

c. The insurance underwriter must have a policy holder's rating in the Best's Insurance Guide, listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety companies. Self-Insurance will not be accepted.

6. Performance Bond.

a. Forwarder agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the Forwarder's obligation to deliver DOD freight to destination. It will cover default, abandoned shipments, bankruptcy and reprocurement costs. The bond will not be utilized for operational problems such as late pickup or delivery, excessive transit time, refusals, no shows, improper or inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by MTMC and will be continuous until cancelled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent (LOI), by the surety company, is required with the initial application. Upon MTMC approval, the Forwarder will submit the performance bond before the Tender of Service will be accepted.

7. Safety.

a. Forwarder agrees not to use any carrier that has an ''unsatisfactory'' safety rating with the Federal Highway Administration (FHWA), Department of Transportation (DOT), and if it is an intrastate motor carrier, with the appropriate state agency.

b. Shipments will be delivered in direct service without delay to the destination shown on the Government Bill of Lading (GBL) unless consignor or consignee directs diversion of the shipment to a new or different destination. Deliveries will be made during the shipper's normal business hours.

c. Forwarder agrees to not divulge any information to unauthorized persons concerning the nature and movement of any movement of shipment tendered to it.

d. The Forwarder agrees to notify, within 24-hours, the consignor and consignee named by GBL or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent details. Upon request, the Forwarder agrees to furnish MTMC a copy of accident reports submitted to the DOT on Form MCS 50–T (property).

e. Forwarder agrees to have in place a company-wide safety management program. Forwarder safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to evaluation by DOD representatives. The Forwarder further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel, or DOD contract employees.

8. [Reserved.]

9. Equipment.

a. Forwarder agrees to ensure equipment is spotted for loading at the time and place requested. Civil Reserve Air Fleet (CRAF) carriers will be utilized to the maximum extent possible for the movement of DOD freight. The Government reserves the right to reject the utilization of any equipment placed for loading by the Forwarder if it does not, upon inspection meet the specifications and requirements for the particular shipment involved (sizes, cube, cleanliness, mechanical condition, etc.).

10. Shipment.

a. Further, the Forwarder agrees to not indulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation.

a. Forwarder agrees to accept GBLs and CBLs on which freight charges will be paid

by the Government, and be bound by all terms stated thereon.

b. Forwarder agrees to comply with documentation prelodging procedures in effect at military terminals in which cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents that identify the shipments to the military terminals prior to arrival of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignors to furnish certain data at least 24-hours in advance of cargo arrival at the terminal.

12. Loss and Damage.

a. The Forwarder agrees to be fully liable for delivery of all cargo in the same condition as received at origin, except loss or damage caused by an Act of God, public enemy act, omission of shipper, inherent vice or detrimental changes due to nature of commodity, or natural shrinkage. Forwarder agrees to settle promptly, claims for loss or damage. Forwarder also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.

13. Standard Tender of Service.

a. The Forwarder agrees to comply with the preparation and filing instructions in applicable freight traffic rules publications issued by MTMC. Forwarder understands that MTMC will reject tenders not in compliance with these instructions.

b. The Forwarder agrees to publish a street address where the company office is located in lieu of post office box number. MTMC must be advised of any change in address. Failure to do so is grounds to discontinue use of the Forwarders.

c. Forwarder understands that tenders inadvertently accepted and distributed for use and not in compliance with this Agreement, the provisions continued in the Standard Tender of Freight Services MT Form 364–R, or the application MTMC Freight Rules Publication, and supplements thereof, will be advised when tenders are removed under these circumstances.

14. Rates.

a. Forwarder agrees to transport Government shipments at the lowest effective charge named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the GBL.

b. The Forwarder agrees to publish through rates guaranteed for at least 30 days. These rates must be filed with USTRANSCOM. The rates for movement of DOD cargo by air will be filed with the Air Mobility Command (AMC). The Forwarder must publish all rates, changes, and accessorial services on a DOD Standard Tender of Freight Services, MT Form 364–R and must comply with the tender preparation instructions. (Only services annotated with a charge in the tender will be paid by the shipper.)

c. The Forwarder agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the Forwarder.

d. The Government reserves the right to pursue administrative claims directly with Forwarders under the Interstate Commerce Act (ICC) or other authorities.

15. Carrier Performance.

a. The Forwarder agrees that it's equipment, performance, and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic Regulation (DTR) and this Agreement. The Forwarder fully understands its obligation to remain current in its knowledge of service standards. The Forwarder accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the Forwarder for unsatisfactory service for any operating deficiency, noncompliance with terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs and tenders. Rules governing the Carrier Performance Program (CPP) are found in MTMC Regulation 15–1, and Army Regulations 55–355 DTMR. If a Forwarder is removed or disqualified for 6 months or more, it will have to be requalify.

b. Failure or nonperformance by the Forwarder with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the Forwarder for unsatisfactory service until such time as the Forwarder establishes, to the satisfaction of DOD that the operating or other deficienc(ies) have been corrected.

16. General Provisions. That the Forwarder must have a valid Standard Carrier Alpha Code (SCAC) and use it on all DOD billing documents to identify the Forwarder. When a company holding the appropriate authority has operating divisions each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC governing the transportation of protected commodities.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment by the MTMC, until terminated upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee, by the Government, of any volume traffic.

d. The Forwarder agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and forwarder name. Forwarder understands that failure to notify MTMC shall be grounds for immediate revocation of the Forwarder's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to Commander, MTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, ATTN: MTOP–QQ.

20. Forwarder Acknowledgment and Acceptance.

a. The undersigned forwarder official, by affixing signature hereto, states that he has read and understands the general and specific terms and conditions of service outlined and agrees to provide service in accordance with such terms or conditions. Any information found to be falsely represented in the Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the carrier, the affiliated companies, division and entities.

Forwarder's Acknowledge/Acceptance

I, _____

(Typed name and title of carrier official)

verify under penalty of perjury, under the laws of the United States of America, that the information contained in the forwarder qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense. Further, I understand the requirements of this Agreement and on behalf of:

_____

(Name of forwarder, typed or legibly printed)

comply with the terms and conditions contained herein.

_____

(Signature of carrier official and title)

_____

(Signature of agent official and title)

Date: _____

Address: _____

Telephone Number: _____

24-Hr. Emergency Number: _____

Military Traffic Management Command Acknowledgment/Acceptance Signature and Title:

_____

Date Approved: _____

Frederick G. Wirtz,

Traffic Management Specialist, Qualification Division.

[FR Doc. 96–23874 Filed 9–17–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–96–003]

RIN 2115–AE47

Drawbridge Operation Regulation; Lower Grand River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Iberville Parish School Board, the Coast Guard is changing the regulation governing the operation of the pontoon drawbridge on LA State Road 77 across the Lower Grand River (Intracoastal Waterway, Morgan City to Port Allen, Alternate Route), mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. The bridge will open on signal; except that from 6:00 a.m. to 8:00 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday, other than Federal holidays, and only during the months when local schools are in session, the bridge will remain closed to navigation.

EFFECTIVE DATE: This regulation becomes effective on October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Phil Johnson, project officer, and LTJG Stephen Alvarez, project attorney.

Regulatory History

On April 26, 1996 the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Lower Grand River, LA in the Federal Register (61 FR 18532) dated April 26, 1996. The Coast Guard Received no letters commenting on the proposal. No public hearing was requested and none was held.

Background and Purpose

The Iberville Parish School Board requested the regulation because a new, staggered starting time has been implemented for the schools in the Parish. The extension of the morning closure for the LA 77 bridge will assist school buses in transporting the students to their classes in a timely manner. The new regulation allows for the free flow of vehicular traffic, while still serving the reasonable needs of navigational interests. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C. § 553(b)(B) that notice and public procedure on the notice are unnecessary.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The basis for this conclusion is that, during the regulated periods, there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the regulated periods should involve little or no additional expense to them.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). This rule will have little impact on either vehicular or navigational traffic. Since this final rule also considers the needs of local commercial fishing vessels, and the economic impact is expected to be minimal, the coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This final rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Paragraph (b) of § 117.478 is revised to read as follows:

§ 117.478 Lower Grand River (Intracoastal Waterway).

* * * * *

(b) The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

* * * * *

Dated: August 14, 1996.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 96–23793 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–60–1–6929a; FRL–5609–3]

Approval and Promulgation of Lead State Implementation Plan for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 18, 1994, the Florida Department of Environmental

Protection (FDEP) submitted revisions to the Florida State Implementation Plan (SIP). The revision includes amendments to the rules in the Florida Administrative Code, Chapters 17–275, Air Quality Areas, and 17–296, Stationary Sources—Emission Standards. These revisions provide for the control of lead emissions from facilities in the State of Florida, and will replace the Federal Implementation Plan requirements. The approval of this plan does not satisfy the requirements of 40 CFR 51.117 which requires the State to submit a source-specific lead plan for Gulf Coast Recycling located in the Hillsborough County lead nonattainment area.

DATES: This action is effective November 18, 1996 unless adverse or critical comments are received by October 18, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Ms. Kimberly Bingham at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 100 Alabama Street, Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, Courtland Street NE, Atlanta, Georgia, 30365. The telephone number is (404) 347–2864 extension 4195.

SUPPLEMENTARY INFORMATION: On September 17, 1984, the State of Florida through FDEP submitted a lead implementation plan, and on November 1, 1985, (50 FR 45605) EPA took final action on the lead SIP. The action disapproved the regulatory portion of the SIP because the regulations needed to implement specific measures necessary to assure attainment and maintenance of the lead national ambient air quality standards (NAAQS) were not included. The EPA promulgated a source-specific Federal Implementation Plan to replace the disapproved Florida lead SIP.

On June 24, 1992, EPA Region 4, notified the Governor of Florida that a portion of Hillsborough County should be redesignated nonattainment for lead (57 FR 44374) based on a violation of the lead NAAQS which is 1.5 micrograms per cubic meter. A lead value of 2.27 micrograms per cubic meter was reported the fourth quarter of 1991 by a monitor located south of the Gulf Coast Recycling plant boundary. On January 8, 1993, the State of Florida requested that the portion of Hillsborough County surrounding the Gulf Coast Recycling Company be redesignated to nonattainment for lead. The EPA published a Notice of Proposed Rulemaking in the Federal Register requesting that the area be designated nonattainment (58 FR 44641). Final rulemaking on this issue has not occurred because Region 4 agreed to allow the State of Florida to withdraw their nonattainment redesignation request if they submitted an approvable lead submittal that provided for the attainment of the lead NAAQS. On August 18, 1994, FDEP submitted revisions to the Florida SIP. The revisions include amendments to the rules in the Florida Administrative Code, Chapters 17–275, Air Quality Areas, and 17–296, Stationary Sources—Emission Standards. These revisions provide for the control of lead emissions from facilities in the State of Florida. This plan will serve only to replace the Federal Implementation Plan requirements codified in 40 CFR 52.535. The State of Florida will be submitting a source-specific plan for Gulf Coast Recycling that provides for the attainment of the lead NAAQS in the Hillsborough County lead nonattainment area and must do so to satisfy the requirements of 40 CFR 51.117.

The EPA is not taking action on Chapter 17–275.410—Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas) and Chapter 17–275.600—Designation of Air Quality Maintenance Areas in this document.

Summary of SIP Revisions

Chapter 17–296.200—Definitions

This chapter defines all lead processing operations subject to these SIP revisions.

Chapter 17–296.600

To control lead emissions in the State of Florida, this chapter requires that all facilities located in the affected area to use reasonable available control technologies (RACT). This chapter requires all affected facilities to submit a revised permit application to the State of Florida that includes an operation and maintenance plan for the lead emissions control devices, collection systems, and processing systems. All affected facilities must keep records of the control equipment operating parameters, maintenance performed, and system malfunctions of the lead emission control equipment and failures and corrective actions taken.

Chapter 17–296.601

This chapter requires the operators of the affected lead facilities to control their fugitive lead emissions with RACT, and include a description of the RACT measures to be employed at the facility. Examples of measures that constitute RACT are also listed in this chapter.

Chapters 17–296.602, 17–296.603, 17–296.604, 17–296.605

These chapters require the affected lead facilities to be equipped with RACT to control their lead emissions, and include air dispersion modeling in their air permit applications that demonstrates that their facility will not contribute to a violation of the lead NAAQS. These chapters also list the emission limiting standards for all of the affected lead facilities.

Final Action

The EPA has evaluated the State's submittal for consistency with the Clean Air Act, EPA regulations, and EPA policy. The EPA has determined that the rules submitted by the State of Florida meet the Clean Air Act's requirements and is approving this submittal under section 110(k)(3).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective November 18, 1996 unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public

comments received will then be addressed in a subsequent final rule based on the proposed rule published with this action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective November 18, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)].

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2) and 7410(k)(3).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action would impose no new requirements, since such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under 5 U.S.C. 801(a)(1)(A) Act (APAA) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

Dated: August 15, 1996.

R.F. McGhee,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(91) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(91) The State of Florida submitted revisions to the FDEP Administrative Code for the Air Pollution Control Program on August 18, 1994. These revisions provide for the control of lead emissions from facilities in the State of Florida, and will replace the Federal Implementation Plan requirements codified in 40 CFR 52.535.

(i) Incorporation by reference. Chapters 17–296.200 (97) and (163) introductory paragraph and (e), 17–296.600–605 effective on August 8, 1994.

(ii) Other material. None.

3. Section 52.535 is removed and reserved.

[FR Doc. 96–23820 Filed 9–17–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 95

[PP Docket No. 93–253; FCC 96–330]

Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Sixth Memorandum Opinion and Order* affirms the competitive bidding procedures adopted in the *Fourth Report and Order,* with several exceptions. Specifically, the *Sixth Memorandum Opinion and Order* proposes to: clarify the Commission's anti-collusion rules; permits use of simultaneous multiple round bidding for interactive video and data service (IVDS) auctions; and eliminates the tax certificate program available to investors in women- and minority-owned businesses in accordance with Congressional action. The *Sixth Memorandum Opinion and Order* also grants a petitioner's request that bidding credits be made available for both licenses in each IVDS service area. The intended effect of this action is to resolve petitions for reconsideration and

to clarify or modify the competitive bidding rules governing the methodology and procedure for auctions for IVDS licenses.

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Wireless Telecommunications Bureau, (202) 418–0680 or Christina Eads Clearwater, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in PP Docket No. 93–253; FCC 96–330, adopted August 6, 1996 and released September 10, 1996. The complete text of the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Title: In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding.

I. Sixth Memorandum Opinion and Order

1. In the *Fourth Report and Order*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330 (1994), the Commission adopted competitive bidding rules for selecting between mutually exclusive applicants for IVDS spectrum. By Public Notices issued on May 23, June 17, and July 5, 1994, the Commission provided additional information concerning the IVDS auctions.

2. Petitioner Phase One argues that, because the Commission may only conduct an auction if there are mutually exclusive applications, it should not have established IVDS auction dates until mutual exclusivity had been determined. Petitioner also maintains that interested parties did not have adequate time to plan their competitive bidding strategy for the IVDS auction.

3. The Commission disagrees with petitioner's assertion that the Commission may not establish auction dates or publicize auctions until it has determined that mutual exclusivity exists. While the Commission recognizes that it cannot conduct an auction for licenses for which there are not mutually exclusive applications, it notes that scheduling and announcing auction dates are no more than preparatory measures. The *Fourth Report and Order*, states, that in the event the Commission receives only one application that is acceptable for filing for a particular frequency segment, then the pre-scheduled auction would be cancelled. Moreover, the Commission conducted the July 1994 auction for IVDS licenses only after mutual exclusivity had been established in all markets. Thus, it concludes that the pre-auction application procedures ensure that spectrum auctions will be conducted only in those circumstances authorized by the Communications Act.

4. The Commission also disagrees with allegations that its auction schedule did not provide applicants adequate time to prepare for the IVDS auction. The Commission received more than 500 applications by the June 27, 1994 filing deadline for short-form applications (FCC Form 175). The large number of timely applications it received, along with its outreach efforts to disseminate information to the public about the IVDS auctions, through the initial May 23, 1994 Public Notice and subsequent public notices issued during the five week period prior to the filing deadline, evidence that a substantial number of parties found themselves aptly prepared to participate in the IVDS auction. As a result, the Commission finds petitioner's contention to be unpersuasive.

5. In the *Second Report and Order*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994), 9 FCC Rcd 2348 (1994)(*Second Report and Order*), the Commission adopted rules prohibiting collusive conduct in the context of competitive bidding. *See* 47 CFR § 1.2105(c); *see also Second Memorandum Opinion and Order*, 59 FR 44272 (August 26, 1994), 9 FCC Rcd 7245, *erratum*, Mimeo No. 50278 (October 19, 1994)(*Second Memorandum Opinion and Order*). Specifically, the Commission determined that bidders would be prohibited from discussing the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on their short-form application. It also required bidders to identify on their short-form applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements relating to the competitive bidding process. *Second Report and Order.* It also determined that auction applicants would not be permitted to make any ownership changes or changes in the identification of parties to bidding consortia once a short-form application is filed. *Id.*

6. The Commission rejected Petitioner ITV's contention that the Commission lacks the authority under the Communications Act to preclude settlements between mutually exclusive applicants for licenses in auctionable services. While the Commission has an established policy of favoring settlements in some contexts, it is within its statutory authority to restrict settlements if the Commission finds such agreements would not be in the public interest. *See, e.g., Report and Order*, MM Docket No. 90–263, 6 FCC Rcd 85 (1990), *modified in part, Memorandum Opinion and Order*, MM Docket 90–253, 6 FCC Rcd 2901 (1991) (limiting settlements between mutually exclusive applicants for broadcast construction permits). At this time, the Commission finds that prohibiting settlements after the short form filing deadline between mutually exclusive applicants for the same license in the IVDS competitive bidding process is necessary to deter collusive conduct and ensure a competitive auction, and is thereby in the public interest. The anti-collusion rules also prevent entities from filing applications solely for the purpose of demanding payment from other bidders in exchange for settlement or withdrawal.

7. Nevertheless, the Commission takes this opportunity to clarify certain aspects of the anti-collusion rules. 47 CFR § 1.2105(c). It clarifies that the anti-collusion rules apply where one applicant has a common ownership interest with another applicant. *Second Memorandum Opinion and Order.* Specifically, unless the second applicant is expressly identified as an entity with whom the first applicant has an agreement concerning bidding, these parties may not communicate with each other concerning their bids or bidding strategies. This prohibition holds even where the other bidder is identified on the applicant's short-form application as having a common ownership interest with the applicant. *Id. See also Public Notice,* Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, DA 95–2244 (October 26, 1995); and further clarification in *Order,* Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications

Act—Competitive Bidding, DA 95–2292 (released November 3, 1995). Further, consistent with the Wireless Telecommunications Bureau's (Bureau) approach in the Broadband PCS C Block auction, amendments to the short-form application must be filed with the Commission within ten business days of any such change. *See Public Notice*, Qualified Bidders and Bidding Instructions For December 18, 1995 Broadband PCS C Block Auction, Report No. AUC–95–05, Auction No. 5 at 3 (December 8, 1995).

8. In the *Second Report and Order*, the Commission established the criteria to be used in selecting the competitive bidding methodology for each auctionable service. Generally, it concluded that awarding licenses to those parties that value them most highly will promote the rapid development and deployment of new services, and the efficient and intensive use of the spectrum. In the *Fourth Report and Order*, the Commission adopted an oral outcry competitive bidding methodology for auctioning 594 MSA licenses in IVDS. For the remaining RSA licenses, the Commission concluded that a sealed bid competitive bidding mechanism was appropriate. The Commission observed that both methods appear suited to IVDS because they are relatively inexpensive for the Commission to administer and the costs of bidder participation are fairly low. The Commission reserved discretion, however, to reconsider this competitive bidding design if, in view of its actual auctions experience, a change appears warranted.

9. The Commission anticipates that it will auction the remaining IVDS licenses using the oral outcry method. It used this method successfully to auction 594 MSA licenses on July 28 and 29, 1994 and finds that auctioning IVDS licenses in this manner continues to serve the public interest. The Commission amends its IVDS rules, however, to permit use of simultaneous multiple round bidding as well. This method, with its remote bidding capabilities, has been successful in PCS, Multipoint and/or Multichannel Distribution Service (MDS), and 900 MHz Specialized Mobile Radio (900 MHz SMR) auctions. As the Commission continues to gain experience in conducting simultaneous multiple round auctions, the costs associated with this methodology decline. As a result, the Commission reserves the option of using a simultaneous multiple round auction methodology for future IVDS auctions. It delegates authority to the Bureau to announce the type of auction and the procedures by public notice.

10. In the event that the Commission uses the simultaneous multiple round auction methodology, it will specify minimum bid increments. *See Second Report and Order.* The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as valid in the current bidding round. The application of a minimum bid increment speeds the auction progress and, along with activity and stopping rules, helps to ensure that the auction closes within a reasonable period of time. Establishing an appropriate minimum bid increment is important in a simultaneous auction with a simultaneous closing rule, because all markets remain open until there is no bidding on any license and a delay in closing one market will delay the closing of all markets.

11. If the Commission elects to use simultaneous multiple round auctions, it will conduct the auction in three stages and start the auction with large bid increments, reducing the increments as bidding activity falls. The minimum bid increment in Stage I of the auction will be 5 percent of the high bid in the previous round or $.02 per bidding unit, whichever is greater. The Commission will reduce the minimum bid increment as the auction moves through its stages, with a minimum bid increment of the greater of two percent or $.01 per bidding unit in Stage II, and the greater of one percent or $.005 per bidding unit in Stage III. The Commission, however, retains the discretion in IVDS auctions to vary the minimum bid increments for individual licenses, or groups of licenses, at any time before or during the course of an auction. The Commission delegates to the Bureau the authority to exercise such discretion. *See* 47 CFR § 0.331; *see also Order*, Amendment of Part 0 of the Commission's Rules to Reflect a Reorganization Establishing the Wireless Telecommunications Bureau and to Make Changes in the Delegated Authority of Other Bureaus, 60 FR 35503 (July 10, 1995), 10 FCC Rcd 12751 (1995).

12. If the Commission decides to use simultaneous multiple round bidding for the IVDS auction, it intends to use a simultaneous stopping rule. Because of the large number of licenses likely to be auctioned at once, however, it will retain the discretion either to use a hybrid stopping rule or to allow bidding to close individually for these licenses. The specific stopping rule to conclude bidding on IVDS licenses will be announced by Public Notice prior to auction. The Commission also retains the discretion to declare at any point after 40 rounds that the auction will end after some specified number of additional rounds. The Commission believes this number of rounds will ensure that the auction will not close prematurely, while providing bidders with fair assurance that the auction will be conducted as intended. *See Fifth Report and Order*, 59 FR 37566 (July 22, 1994), 9 FCC Rcd 5532 (1994). Bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It will also enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed the likely benefits of continuing to allow bidding. The Commission will announce by Public Notice the number of remaining rounds and other final bidding procedures. The Commission delegates to the Bureau the authority to exercise such discretion.

13. *Duration of Bidding Rounds.* In simultaneous multiple round auctions, bidders may need a certain amount of time to evaluate back-up strategies and develop their bidding plans. In the event the Commission uses the simultaneous multiple round auction methodology, it delegates to the Bureau the discretion to vary the duration of the bidding rounds or the interval at which bids are accepted (e.g., run more than one round per day) in order to move the auction toward closure more quickly. The Bureau will announce any changes to the duration of, and intervals between, bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

14. As discussed above, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time and to increase the information conveyed by bid prices during the auction, it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. In the *Second Report and Order*, the Commission adopted the Milgrom-Wilson activity rule as its preferred activity rule where a simultaneous stopping rule is used. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of bidding units, and to make an upfront payment proportional to that eligibility level. In each round, bidders are limited

to bidding on licenses encompassing no more than the number of bidding units covered by their upfront payment. Licenses on which a bidder is the high bidder at the end of the withdrawal period in the previous round, as well as licenses on which a new valid bid is placed, count toward this limit. Under this approach, bidders have the flexibility to shift their bids among any license for which they have applied so long as, within each round, the total bidding units encompassed by those licenses does not exceed the total number of bidding units on which they are eligible to bid.

15. In general, the auction will start in Stage I and move to Stage II if the auction activity level is below 10 percent for three consecutive rounds in Stage I, and move from Stage II to Stage III if the auction activity level is below five percent for three consecutive rounds in Stage II. In no case can the auction revert to an earlier stage. However, the Commission retains the discretion to announce during the course of an auction when, and if, the auction will move from one auction stage to the next. These determinations will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level defined above, the percentage of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission delegates to the Bureau the authority to exercise such discretion.

16. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission on a particular day, the Commission will provide bidders with five activity rule waivers that may be used in any round during the course of the auction. If a bidder's activity level is below the required activity level a waiver automatically will be applied. That is, if a bidder fails to submit a bid in a round, and its activity level from any standing high bids (high bids at the end of the bid withdrawal period in the previous round) falls below its required activity level, a waiver will be applied automatically. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the amount bid. An activity rule waiver applies to an entire round of bidding and not to a particular MSA or RSA service area.

17. Bidders will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they intentionally wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility will be reduced permanently (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction open. Bidders will have the option to enter an activity rule waiver proactively during the bid submission period. Thus, a ''proactive'' waiver, as distinguished from an automatic waiver, is one requested by the bidder. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open.

18. If a simultaneous multiple round auction is employed, the Commission retains the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control and delegates to the Bureau the authority to exercise such discretion. The Bureau also retains the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

19. A waiver may be submitted either in the round in which bidding falls below the minimum required level to maintain (for the next round) the same eligibility as in that round, or prior to submitting a bid in the next round. If an activity rule waiver is entered in a round in which no other bidding activity occurs, the auction will remain open. However, an activity rule waiver entered after a round in which no other bidding activity occurs will not reopen the auction. In addition, to help ensure that the auctions are not closed prematurely, the Commission will retain the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. In such an instance, the Commission would, in effect, be submitting its own proactive waiver, thus keeping the auction open. At such time, the Commission could also advance to larger bid increments, speeding the pace of the auction.

20. If the Commission chooses to use a simultaneous multiple round auction methodology, it intends to apply bid withdrawal provisions. In the *Second Report and Order,* the Commission determined that bid withdrawal provisions were needed to discourage insincere bidding. The Commission observed that insincere bidding, whether frivolous or strategic, distorts the price information generated by the auction process and reduces its efficiency. Accordingly, the Commission adopts the bid withdrawal provisions established in the *Second Report and Order.* 47 CFR § 1.2104(g)(1). Pursuant to these rules, any bidder who withdraws a high bid during an auction will be required to reimburse the Commission the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid. If a license is reoffered by auction, the ''winning bid'' refers to the high bid in the auction in which the license is reoffered. If a license is reoffered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay an amount equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal is not re-auctioned but is instead offered to the highest losing bidders in the initial auction, the ''winning bid'' refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, i.e., they may decline without penalty. The payment amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. [*But see Order,* Atlanta Trunking Associates, Inc. v. MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, FCC 96–203, (released May 3, 1996) (summarized in 61 FR 25807 (May 23, 1996)), *recon. pending;* the *Atlanta Trunking* guidelines were formally incorporated into and adopted by *Report and Order,* 61 FR 33859 (July 1, 1996), FCC 96–278 (released June 24, 1996) which amended § 24.704 of the competitive bidding rules.]

21. In establishing its auction methodology for IVDS, the Commission set forth several provisions to ensure that winning bidders have the resources needed to obtain their licenses and construct their systems and to discourage insincere bidding. In the *Fourth Report and Order,* the Commission required applicants to show a cashier's check in the amount of $2,500 for each five licenses sought in order to obtain a bidding number and

participate in the auction. Immediately following the auction, winning bidders were required to submit a $2,500 upfront payment for every five licenses won. The Commission anticipated that this amount would ensure that only serious, qualified applicants would be eligible to bid at auction. In addition, it required winning bidders to make a substantial down payment within five business days after the close of bidding. Generally, the Commission required that the down payment be sufficient to bring the winning bidder's total deposit with the Commission up to 20 percent of the amount bid. Small business applicants were permitted to pay 10 percent at that time and the remaining 10 percent within five days of the grant of the license.

22. Petitioner ITV requests that the Commission refund upfront payment amounts to the extent that they not only cover, but exceed, the required down payment. Petitioner maintains that this policy would ensure that winning bidders are not penalized by prevailing with a low bid. Petitioner alleges that this modification is especially important to applicants that qualify as a small business, who need to conserve their financial resources for other auctions, and when the Commission cannot pay interest on collected funds.

23. The Commission grants the petition on this issue. The Commission agrees with petitioner that winning bidders should not be penalized because their winning bid was lower than the amount the upfront payment would suggest. The Commission will issue a refund to any qualified applicants after determining that no bid withdrawal or default payments are owed. Due to administrative constraints, however, the Commission will not honor requests that any excess amount be retained and applied toward later payments or obligations. Additional instructions for obtaining a refund will be provided in a Bidder Information Package prior to auction.

24. In the *Fourth Report and Order,* the Commission adopted default payments to discourage insincere bidding and to compensate the government for the cost of reauctioning a license. Specifically, the Commission determined that the defaulting auction winner would be assessed an additional payment of three percent of the subsequent winning bid or three percent of its own bid, whichever is less.

25. Petitioner ITV requests that, where the new bid on a license (upon reauction) exceeds the defaulting applicant's bid by 3 percent or more, no default payment be applied. In the event that the subsequent bid exceeds the defaulting bid by less than 3 percent, petitioner requests that the defaulting applicant should only be responsible for payment of the difference between the subsequent winning bid and 103 percent of the defaulting applicant's bid. Petitioner maintains that this proposal will prevent any windfall to the U.S. Treasury.

26. The Commission believes that its existing default provisions serve an important purpose by helping to deter insincere or speculative bidding, and providing an incentive for bidders wishing to withdraw their bids to do so before bidding ceases. In the *Second Report and Order,* the Commission observed that it is appropriate to create such an incentive because a withdrawal that occurs after an auction closes (default) is likely to be more harmful than one that occurs before closing. The Commission noted, for example, that default reduces the likelihood that licenses will be assigned to those who value them the most and imposes additional costs on the government. Therefore, it determined that an additional 3 percent payment would discourage bidders from defaulting on licenses won at auction. The Commission continues to believe that this amount is appropriate and will reasonably compensate the government for costs associated with reauctioning the license. Thus, petitioner's proposal is rejected.

27. In the *Fourth Report and Order,* the Commission established several special provisions to ensure that designated entities, i.e., small businesses, rural telephone companies, and businesses owned by members of minority groups and women, are given the opportunity to participate both in the competitive bidding process for, and in the provision of, IVDS. The Commission's rules provide that on one of the two licenses in each market, a 25 percent bidding credit would be awarded to a winning bidder that is a business owned by women or minorities. 47 CFR §§ 95.816(d)(1). It declined to provide bidding credits to rural telephone companies, however, because the Commission concluded that the relatively modest build-out costs for systems in this service would make such special provisions unnecessary to ensure that they had the opportunity to participate in the provision of IVDS offerings to rural areas. The Commission also made tax certificates available to initial investors in minority and women-owned businesses, and to licensees that transfer their authorizations to minority and women-owned enterprises. *Id.* Finally, because installment payments are an effective way to promote the participation of designated entities and to distribute licenses and services among geographic areas, and because use of IVDS spectrum is very likely to match the business objectives of *bona fide* small businesses, the Commission allowed small businesses to pay for their licenses using installment payments. *Id.*

28. Also, to ensure that its special provisions for designated entities would benefit only the parties to whom they were directed, the Commission adopted ''unjust enrichment'' provisions designed to discourage trafficking in licenses obtained using these special provisions. 47 CFR §§ 1.2111, 95.816(e). For example, the unjust enrichment provisions require reimbursement of the bidding credit plus interest when the licensee assigns or transfers the license to a business not owned by minorities and/or women. In addition, the Commission requires small business licensees to pay back the full amount of the remaining principal balance upon transfer or assignment of a license to a non-qualifying entity. 47 CFR § 1.2110(c).

29. Petitioner ITV requests that a bidding credit be made available for both licenses in each IVDS service area. Petitioner asserts that the Commission did not adequately explain why it restricted the use of bidding credits to one license per service area, and that any interest in ''maximizing'' auction revenue would be contrary to statutory authority.

30. The Commission grants the petition on this issue. In the *Fourth Report and Order,* the Commission stated that providing bidding credits in the IVDS auctions was ''necessary to provide [the pertinent] designated entities with a significant enough advantage to ensure their ability to compete successfully for some IVDS licenses.'' *Fourth Report and Order.* The Commission notes, however, that it is not required to provide all potential special provisions to all designated entities in all auction contexts. The Commission also notes, contrary to petitioner's assertions, that it did not limit the application of bidding credits to only half of the available licenses solely to maximize auction revenues, but rather considered many other factors. The Commission chose to make bidding credits available to only half of the available licenses, rather than all of them, because the Commission believed that this substantial level of assistance, coupled with the special provision of tax certificates, fulfilled its statutory mandate to ensure that businesses owned by minorities and/or women would have a meaningful opportunity to

participate in the competitive bidding process for, and in the provision of, IVDS offerings. The Commission notes that these provisions achieved a high degree of designated entity participation in the initial IVDS auction. Of the 594 licenses, 195 (32.8%) were won by bidders claiming minority-owned status, 282 (47.5%) by bidders claiming woman-owned status, and 557 (93.8%) by bidders claiming small business status. Since that time, however, the tax certificate program has been discontinued by Congress, and, as discussed *infra*, the Commission is reconsidering the eligibility criteria for bidding credits in the IVDS context in light of the Supreme Court's recent decision in *Adarand*. Accordingly, to the extent bidding credits are retained for IVDS, the Commission will provide bidding credits for both licenses in each service area. In view of the discontinuation of the tax certificate program, the Commission believes that extending the bidding credit to both licenses is appropriate to increase the participation opportunities available for designated entities.

31. The Commission eliminates the tax certificate program available to investors in women-and minority-owned firms. The Commission adopted the tax certificate program in the *Fourth Report and Order* pursuant to authority granted in 26 U.S.C. § 1071. Congress has since repealed Section 1071. As a result, the Commission is compelled to eliminate the tax certificate provision in the IVDS rules.

32. Petitioner ITV asserts that the unjust enrichment provision for the transfer of a license obtained using bidding credits should not apply when the license is assigned or transferred at a loss. Petitioner also asserts that, when the license is profitably assigned or transferred, the forfeiture should be based on profits directly attributable to the license, rather than on the government's cost in providing the bidding credit.

33. The petition is denied on this issue. The Commission does not believe that the unjust enrichment provisions should take into account the profits or losses of particular businesses. The recapture provisions are designed not only to repay the government for the cost of the benefit conferred, but also to ensure that the special provisions adopted for designated entities benefit the parties to whom they were directed. Special treatment of designated entities is intended to further the statutory policy of ensuring that these entities have the opportunity to participate in spectrum-based services. The repayment provisions the Commission adopted help to promote the long-term holding of licenses by those parties benefitting from bidding credits and installment payment provisions.

34. Petitioners RCA and USIN request that rural telephone companies be provided all the special provisions extended to small businesses and businesses owned by women or minorities. They assert that the Communications Act requires that special provisions be provided to rural telephone companies, and that, without bidding credits and other special provisions, it is unlikely that IVDS offerings will be available in rural areas. They further assert that it will take more than build-out capability for rural telephone companies to provide IVDS offerings. They maintain the financial ability is required to obtain the license at auction in the first place.

35. The petitions are denied on this issue. As noted *supra*, the Commission has discretion to tailor the use of special provisions as necessary for each particular service. For IVDS, the Commission expects that the cost of winning licenses and subsequently building-out systems will be relatively modest, compared to the costs associated with other services subject to auctions. Petitioner notes that the *Fourth Report and Order* lacks discussion of the expected actual build-out costs of IVDS systems and the economic characteristics of rural telephone companies. While the Commission cannot yet determine with precision any average cost figures for building and operating an IVDS system, it is familiar with the technical and operational parameters of the service, and believes its assumption is reasonable that build-out costs will be modest relative to such costs for other auctionable services. In addition, the Commission has previously assessed the economic characteristics of rural telephone companies in this proceeding. As a result, the Commission expects that rural telephone companies, even without special provisions, will be able to compete effectively both during the auction and in providing service.

36. With respect to bidding credits, as discussed *infra*, the Commission is proposing to eliminate bidding credits for minority and women-owned businesses and extend a 25 percent bidding credit to small businesses only. A rural telephone company would be eligible for the bidding credit to the extent that it also qualifies as a small business. The Commission also affirms its decision not to provide installment payments for those rural telephone companies that are not also small businesses. The Commission continues to believe that qualification for installment payments should be limited to businesses that qualify as small.

37. Further, the Commission anticipates that rural areas will be served despite the lack of special provisions for rural telephone companies, because other companies can also serve these areas at relatively low cost. While rural telephone companies possess infrastructure that might place them initially at an advantage over other applicants intending to serve rural areas, they do not, in the IVDS context, require an additional advantage in the form of a separate special provision before it is economically advantageous for them to serve rural customers. Whether or not the Commission establishes special provisions in this context is not why rural telephone companies will elect to provide or not provide service to these rural areas. Therefore, consistent with the *Fourth Report and Order*, the Commission denies petitioners' request that it adopt special provisions specifically for rural telephone companies.

38. *Audits.* Since the initial IVDS auction, the Commission has revised the short-form application to place applicants on notice of the Commission's authority to audit licensees and license applicants. *See* Public Information Collection Requirement Submitted to Office of Management and Budget for Review. The Commission believes the use of audits and other enforcement tools is necessary to maintain the integrity of the self-certification process it has used to the designated entity provisions. The Commission has specified this authority in its revised IVDS rules.

39. *Long-Form Application*. While IVDS applicants have previously provided their financial information by filing Form 574 as their long-form application, the Commission now requires that they use Form 600. *See* Notice of Public Information Collections Submitted to OMB for Review and Approval, 61 FR 3699 (February 1, 1996). While Form 600 contains certain instructions that IVDS applicants would be instructed to ignore, it is a more complete form than the current Form 574.

40. *Divestiture Provisions*. In establishing rules for IVDS, the Commission concluded that the best way to promote competition in the IVDS marketplace is to make at least two licenses available in each market. *Notice of Proposed Rule Making*, GEN Docket No. 91–2, 56 FR 10222 (March 11, 1991), 6 FCC Rcd 1368, 1371 (1991). The Commission's rules therefore

prohibit an IVDS licensee from acquiring an interest in another IVDS license in the same service area where it is licensed. 47 CFR § 95.813(b)(2). The Interactive Television Association (ITA) requests that the Commission initiate a rule making proceeding to eliminate this ownership restriction and permit one licensee to own both licenses in a market. Petitioner ITA maintains that, in view of several telephone and cable companies' interest in interactive television, these rules are no longer needed to promote competition. The Commission declines to grant this petition for rule making at this time. The Commission observes that the interactive television marketplace is in a relatively early state of competition. Moreover, allowing a single entity to acquire both licenses in a service area would limit the opportunity for other potential competitors to emerge. Such a result is inconsistent with Congress' mandate to facilitate the dissemination of licenses among a wide variety of applicants. 47 U.S.C. 309(j)(3)(B).

41. On its own motion, the Commission also clarifies that, where unintended common attributable ownership interests exist between two license winners in an IVDS service area, an applicant will be permitted to divest itself of the prohibited common ownership within 90 days after license grant. Assuming that the applicant is otherwise qualified, the Commission will conditionally grant the license if the winning applicant has submitted a signed statement with its long-form applications stating its intent to divest. The licensee must then certify its compliance when timely achieved. In addition, in the event that a licensee seeks to bid on another license in its market at a future auction, it may request a waiver of the common ownership prohibition to bid on the other license. If the licensee then wins the second license, the licensee must divest itself of its existing license within 90 days of the grant of the second and is responsible for all penalty or other amounts that result from these transactions. Any licensee desiring such a waiver should submit its statement and request as an attachment to its short-form application.

II. Procedural Matters

42. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 604, the Commission's final analysis for the *Sixth Memorandum Opinion and Order* is as follows:

43. *Need for and purpose of this action.* As a result of new statutory authority, the Commission may utilize competitive bidding mechanisms in the granting of certain initial licenses. The Commission published an Initial Regulatory Flexibility Analysis, *see generally* 5 U.S.C. § 603, within the *Notice of Proposed Rule Making* in this proceeding (at 8 FCC Rcd 7635, Appendix at 7666 (1993)), and published Final Regulatory Flexibility Analyses within the *Second Report and Order* and the *Fourth Report and Order.* As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

44. *Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis.* As this is an Order on Reconsideration, there is no initial regulatory flexibility analysis to which petitioners are responding. There were no petitions which discussed the final regulatory flexibility analysis in the underlying order.

45. *Significant alternatives considered.* Although no comments were received pertaining to IVDS, the *Second Report and Order* and *Fourth Report and Order* addressed at length the general policy considerations raised as a result of the Commission's new auction authority.

46. With respect to the *Memorandum Opinion and Order* reconsidering the rules, a Final Regulatory Flexibility Analysis (FRFA), in compliance with 5 U.S.C. Section 801, is provided as follows.

47. This action reconsiders rules previously adopted by the Commission and is authorized under Section 405 of the Communications Act, 47 U.S.C. § 405. Because the action is not generated by a Notice of Proposed Rule Making, there is no applicable Initial Regulatory Flexibility Act analysis to which it responds. However, the Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–131, 110 Stat. 847 (1996).

A. Need for and Objective of the Rules

48. This Order adopts rule changes regarding the Commission's auction of Interactive Video and Data Service (IVDS) licenses. The rule changes are appropriate because laws have changed since the rules were originally adopted which invalidate some of the provisions, because the Supreme Court decision in *Adarand Constructors, Inc. v. Peña,* 115 S.Ct. 2097 (1995), has affected the Commission's decisions regarding the level of legal scrutiny that must be met by some of its designated entity provisions, and because petitions for reconsideration of earlier orders have caused us to review the rules in a new light. The objective of the Order is to bring the benefit of the Commission's experience since the first IVDS auction to subsequent IVDS auctions and to make opportunities available to small businesses to operate in the service. The most significant changes being made are: to allow IVDS licenses to be auctioned using a simultaneous multiple round auction methodology; to eliminate the tax certificate program for licensees; and to extend bidding credits to both licenses in each IVDS market.

B. Summary of Issues Raised by Public Comment on the Initial Regulatory Flexibility Analysis

49. As this is an Order on Reconsideration, there is no initial regulatory flexibility analysis to which petitioners are responding. There were no petitions which discussed the final regulatory flexibility analysis in the underlying order.

C. Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

Authorizing Use of Simultaneous Multiple Round Auctions

50. The Commission, on its own motion, is adopting a rule which will permit IVDS licenses to be auctioned using a simultaneous multiple round auction in addition to oral outcry auctions. The Commission is recommending the use of an oral outcry auction for the RSA and re-auctioned licenses, but it is trying to add flexibility in the event that a simultaneous multiple round auction would be more appropriate at some later point. A simultaneous multiple round auction will allow remote access to bidding software, auction information, bid submission and results. This will make it easier for small business operators to participate in an auction without leaving their places of business. Also, it will make information concerning the status of the auction easier to access, which will reduce the administrative burden on participants in the auction. There are no other reporting, recordkeeping or compliance changes which would result from this rule change.

Elimination of the Tax Certificate Program

51. The Commission had authority under Title 26 of the United States Code, 26 U.S.C. § 1071, to issue tax certificates to benefit women and/or minority owned businesses. In 1995, the Congress repealed section 1071. This rule is being eliminated to comply with the tax code.

Bidding Credits Extended to Both Licenses in Each MSA

52. The Commission originally wrote its rules to permit a bidding credit to be awarded to only one auction winner in each MSA. Originally, a minority- or woman-owned business designated entity auction winner who did not receive a bidding credit was free to transfer its license and gain the benefits of a tax certificate. The auction winner who received a bidding credit was subject to unjust enrichment penalties if it transferred the license. The tax certificate acted as the equivalent of a bidding credit, helping an auction winner attract capital. If the auction winner's license was transferred to a designated entity, or the winner is a designated entity, the tax certificate would provide a financial incentive for transacting business with the designated entity. In the absence of a tax certificate program, small businesses with gross revenues under the requisite levels will be eligible for a bidding credit on both licenses in the MSA. The companies eligible for these bidding credits will have to provide information to the Commission which establishes that they meet the qualifications to receive the bidding credit. This reporting requirement is necessary to avoid fraud on the public.

Long Form Application Changed to Form 600

53. Applicants were required to submit financial information regarding their qualification to hold a license on an FCC Form 574. The Commission has secured approval by the Office of Management and Budget for the use of the FCC Form 600. This form collects more accurate and complete financial information regarding applicants. As a result, it helps the Commission ensure that the applicants for licenses are fully qualified to hold licenses, reducing the amount of time that radio spectrum would sit unused, if it were subject to legal dispute.

Winning Bidders May Receive Upfront Payment Refund

54. One petitioner, ITV, requested that when upfront money on deposit exceeded the amount necessary for a winning bidder to make its down payment the excess funds be refunded to the bidder. The Commission granted the request to change its rules to alleviate one source of financial constraints on small businesses. This will not result in any changed reporting or recordkeeping. It could reduce the need to secure additional interim financing.

55. All of these changes were made to encourage the participation of designated entities in the auctions of IVDS licenses, as Section 309(j) of the Communications Act requires.

D. Description and Estimate of Small Entities Subject to the Rules

56. The proposed changes in the regulations would affect a number of entities both large and small. The Commission was directed by the Communications Act, 47 U.S.C. 309(j) to make provisions to ensure that smaller businesses, and other designated entities, have an opportunity to participate in the auction process. To fulfill this statutory mandate, these proposed rules are designed to attract participation by the small entities. The small businesses who will be subject to the rules would be those which choose to operate interactive video and data services, a class of wireless communications services with a wide variety of uses. The services will generally be offered to consumers who wish to subscribe to those services.

57. IVDS is a communications based service subject to regulation as a wireless provider of pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services. The Small Business Administration (SBA) defines small businesses in SIC 4841 as businesses with annual gross revenues of $11 million or less. 13 CFR § 121.201. In this, the Commission proposes to extend special provisions to small businesses with annual gross revenues of $15 million or less and additional benefits to very small businesses with annual gross revenues of $3 million or less. The Commission observes that this proposal is consistent with its approach in other wireless services, *see e.g.,* the 900 MHz specialized mobile radio service, and is narrowly tailored to address the capital requirements for IVDS. The Commission is soliciting SBA approval for the small business definitions for this and other auctionable services.

58. The Commission estimate of the number of small business entities subject to the rules begins with the Bureau of Census report on businesses listed under SIC 4841, subscription television services. The total number of entities under this category is 1,788. There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services. The Commission knows that many of these businesses are cable and television service businesses, rather than IVDS licensees. Therefore, the number of small entities currently in this business which will be subject to the rules will be less than 1,463.

59. The first IVDS auction resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the Commission defined a small business as an entity, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the upcoming IVDS reauction of approximately 100 licenses in metropolitan service area (MSA) markets and auction of 856 licenses in rural service area (RSA) markets (two licenses per market), bidding credits and installment payments are available to encourage participation by small and very small businesses. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the proposed rules. Given the success of small businesses in past IVDS auctions, and that small businesses make up over 80 percent of firms in the subscription television services industry, the Commission assumes for purposes of this FRFA that all of the licenses may be awarded to small businesses, which would be affected by the rules amendments. The Commission estimates that some companies will win more than one license, as happened in the earlier IVDS auction.

60. Applicants seeking to participate in the auction also will be subject to these rule amendments. It is impossible to accurately predict how many small businesses will apply to participate in the auction. In the last IVDS auction, there were 289 qualified applicants. The Commission does not anticipate that there will be significantly more participants in the subsequent IVDS auction.

E. Steps Taken to Minimize the Burdens on Small Entities

61. The changes made in *Sixth Memorandum Opinion and Order* are designed to minimize burdens on small businesses. The extension of an

additional bidding credit to the second license in each market will assist businesses owned by women and minorities. Most of the businesses owned by women and minorities which have participated in the FCC's auctions are small businesses which will benefit from this rule. This rule change will benefit small businesses owned by women and minorities by doubling the number of bidding credits available to them.

62. Refunds of excess upfront payments on deposit will benefit small businesses. Smaller businesses often have more difficulty in raising capital. The rules permitted the retention of any excess upfront payments on deposit with the FCC to apply to down payments or to bid withdrawal payments. 47 CFR § 1.2106. While an upfront payment is an important part of ensuring that only serious bidders participate in the Commission's auction process, it is also important that small businesses have an opportunity to put their more limited funds to the best possible use. By assuring the return of excess funds after the first down payment and any withdrawal penalties are paid, small businesses will have those funds to use as they wish.

63. By adding an auction methodology, the Commission adds flexibility to its auction process. One advantage of simultaneous multiple round auctions is that they can make it possible for bidders to participate from their own places of business. That is an advantage under some auction circumstances. The Commission has chosen to use an oral outcry auction for the RSA license auction, and for the first MSA licenses which will be re-auctioned, because an oral outcry auction will be most efficient.

F. Significant Alternatives Considered and Rejected

Authorizing Use of Simultaneous Multiple Round Auctions

64. The Commission does not currently have plans to use a simultaneous multiple round auction for this service. The rule is being added should it become necessary at a later time to re-auction licenses which have developed a higher degree of interdependence. Because this rule adds administrative expediency, which will speed the issuance of licenses, the Commission have chosen to add the option of an additional auction methodology for this service. The Commission is acting to minimize delays in the close of an auction by adding flexibility to its stopping and activity rules. It determined that the alternative of leaving the rules unchanged could delay the auction process at some time in the future.

Elimination of the Tax Certificate Program

65. All small businesses which were owned by members of minority groups or women who choose to participate in the auction for IVDS licenses will be subject to this rule change. Due to the repeal of the tax code provision, the Commission has no choice but to eliminate this provision which benefitted these small businesses.

Bidding Credits Extended on Both Licenses in Each MSA

66. This rule will apply to any small businesses owned by women or minorities that eligible for bidding credits which participate in the re-auction of MSA licenses. The Commission considered leaving the rules unchanged, but in the absence of the tax certificate program, the rules may have unfairly disadvantaged some minority or women owned small businesses while offering greater advantages to some of their competitors. Therefore, in eliminating the tax certificate program, the Commission felt it necessary to extend the bidding credit to both licenses in each market. The Commission considered the extension of bidding credits to rural telephone companies. The Commission is not required to make all benefits available to all designated entities. Consequently, in weighing the competing public policy concerns with respect to bidding credits, the Commission chose not to extend bidding credits to rural telephone companies.

Long-Form Application Changed to Form 600

67. This rule will enable the Commission to more effectively evaluate applications filed for IVDS licenses. The Commission did not consider alternatives because in adapting its processes to auctions, the Commission has concentrated on reducing the number of different forms and steps that auction participants will have to master to participate in the process. Because all other auctionable services have shifted to the Form 600, IVDS auction participants will be able to use information they may have filed for other auctionable services in any future IVDS auctions as well.

Winning Bidders May Receive Upfront Payment Refund

68. The rules previously did not make clear that an auction winner could receive a refund of any excess monies on deposit with the FCC, after payment of the first down payment and any penalties due. This rule change was made to ensure that businesses which win IVDS licenses have as much capital available to build systems and serve the public as possible. Because the rule change results in returning money to businesses, the Commission did not consider alternatives in making this change.

G. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. § 609

69. The Commission did not seek specific comments regarding small entities' views of the rules being changed because the petitions and comments were filed in this proceeding prior to the enactment of the 1996 Regulatory Flexibility Act Amendments. However, the Commission, in making changes to the rules, has sought to alleviate burdens on small businesses. When Congress authorized the FCC to use auctions, it instructed the FCC to make provisions for designated entities, including small businesses, when it designed competitive bidding mechanisms.

H. Report to Congress

70. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Memorandum Opinion and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 4 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

71. Authority for issuance of this *Sixth Memorandum Opinion and Order* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

72. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), this *Sixth Memorandum Opinion and Order* is adopted, and Parts 1 and 95 of the Commission's Rules are AMENDED as set forth below.

73. *It is further ordered* that the rule changes made herein *will become effective* November 18, 1996. *It is further ordered* that, as described above, the petition for reconsideration filed by ITV *is granted* in part to the extent described above and *is denied* in all other respects, the petitions for reconsideration filed by Phase One, RCA, and USIN *are denied*, and the

petition for rule making filed by ITA *is denied*.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1 and 95 of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.2107 is amended by revising paragraph (c) to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b). For example, if the applicant is high bidder for a license in the Interactive Video Data Service (see 47 CFR part 95, subpart F), the long-form application will be submitted on FCC Form 600 in accordance with § 95.815 of this chapter. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, NW., Room 222, Washington, DC 20554. An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104.

* * * * *

PART 95—PERSONAL RADIO SERVICES

1. The Authority Citation for part 95 continues to read as follows.

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.815 is amended by revising paragraphs (b), (d)(2), and (f)(3) to read as follows:

§ 95. 815 License application.

* * * * *

(b) Each application for an IVDS system license must be made on a separate FCC Form 600, and must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 358365, Pittsburgh, PA 15251–5365. Each application for a CTS license where the CTS antenna exceeds 6.1m (20 feet) (see § 95.811(b)) must be made on a separate FCC Form 574, and must be submitted to the address set forth in § 1.1102 of this chapter.

* * * * *

(d) * * *

(2) A completed application (FCC Form 600).

* * * * *

(f) * * *

(3) A separate application (FCC Form 600) for each CTS that is being added or modified.

* * * * *

3. Section 95.816 is amended by revising paragraphs (c)(1), (c)(2), (c)(4), (c)(6), and (d)(1); removing paragraph (d)(2); and redesignating paragraph (d)(3) as (d)(2) and revising it; and adding new paragraph (d)(3) to read as follows:

§ 95.816 Competitive bidding proceedings.

* * * * *

(c) * * *

(1) Competitive bidding design options and mechanisms. The Wireless Telecommunications Bureau will select competitive bidding design(s) and mechanisms in accordance with §§ 1.2103 and 1.2104 of this chapter. If simultaneous multiple round bidding is used, the Wireless Telecommunications Bureau has the discretion to vary the duration of the bidding rounds or the interval at which bids are accepted at any time before or during the course of the auction.

(2) Forms.

(i) Applicants must submit short-form applications (FCC Form 175) as specified in Commission Public Notices. Minor deficiencies may be corrected prior to the auction. Major modifications such as changes in ownership, failure to sign an application or failure to submit required certifications will result in the dismissal of the application. *See* 1.2105(a) and (b) of this chapter.

(ii) Applicants must submit a long-form application (FCC Form 600) within ten (10) business days after being notified that it is the winning bidder for a license. *See* 1.2107(c) and (d) of this chapter.

* * * * *

(4) Down payments. *See* § 1.2107(b) of this chapter.

* * * * *

(6) Withdrawal, default or disqualification. *See* §§ 1.2104(g) and 1.2109 of this chapter.

* * * * *

(d) * * *

(1) *Bidding credits.* A winning bidder that qualifies as a business owned by women and/or minorities may use a bidding credit of twenty five (25) percent to lower the cost of its winning bid.

(2) *Installment payments.* Each licensee that qualifies as a small business may pay the remaining 80 percent of the net auction price in quarterly installment payments pursuant to § 1.2110(e) of this chapter. Licensees who qualify for installment payments are entitled to pay their winning bid amount in installments over the term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for five-year U.S. Treasury obligations. Payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining three years of the license term. A license issued to an eligible small business that elects installment payments shall be conditioned on the full and timely performance of the license holder's quarterly payments.

(3) Audits.

(i) Applicants and licensees claiming eligibility under this section shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, on information, or on the basis of other factors.

(ii) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents, and other material (including accounting procedures and practices) regardless of form or type,

sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed IVDS and shall also include consent to the interview of principals, employees, customers and suppliers of the applicant or licensee.

* * * * *

[FR Doc. 96–23939 Filed 9–17–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 960703187–6253–02; I.D. 062096B]

RIN 0648–AI96

Fisheries of the Exclusive Economic Zone Off Alaska; Allow Longline Pot Gear

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to allow the use of longline pot gear by vessels engaged in directed fishing for sablefish in the Bering Sea subarea (BS). Sablefish hook-and-line fishermen in the BS have faced increasing predation of hooked sablefish by killer whales. The use of longline pot gear will effectively prevent such predation. This action is necessary to protect Bering Sea sablefish harvests and is intended to resolve a conflict between fishermen and a species protected under the Marine Mammal Protection Act of 1972 (MMPA).

EFFECTIVE DATE: September 12, 1996.

ADDRESSES: Copies of the final rule and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson Fishery Conservation and Management Act. This FMP, implemented by regulations at 50 CFR parts 600 and 679, authorizes changes to gear restrictions without amendment to the FMP. The regulations at § 679.24 specify gear types that may be employed to harvest sablefish in the BS. Killer whales (*Orcinus orca*) are protected under the MMPA, which prohibits harassment of marine mammals and authorizes the Secretary of Commerce to consult with and assist regional fishery management councils to reduce takings of marine mammals incidental to commercial fishing operations.

BS sablefish quotas have been underharvested due in part to killer whale predation of hooked sablefish. Such predation causes conservation and economic concerns that can be resolved by allowing longline pot gear in this fishery. Further information on the history of and need for this action may be found in the preamble to the proposed rule published on July 16, 1996 (61 FR 37041).

One change has been made in the final rule from the proposed rule. At proposed § 679.24(c)(4)(i), the term ''pot'' may seem ambiguous; therefore, the sentence is revised to refer to ''longline pot'' and ''pot-and-line'' gear, which are terms defined in § 679.2, Definitions.

Comments on the Proposed Rule

Comment: NMFS received one letter of comment on this action. The comment supports the implementation of this change as improving the ability of fishermen to harvest sablefish more economically and efficiently. The comment also requests that the 30-day delayed effectiveness period be waived to provide fishermen more opportunity to take advantage of this action during the current Individual Fishing Quota (IFQ) season.

Response: NMFS concurs that this action will improve the efficiency and profitability of the BS sablefish fishery. NMFS notes the commenter's desire for expeditious implementation of this regulatory change.

Classification

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

Because this final rule allows fishermen in the BS sablefish fishery the option of using longline pot gear to protect harvests from killer whale predation, it relieves a restriction. Thus, under 5 U.S.C. 553(d)(1) it is not subject to a delay in effective date.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA), supplemented by a FRFA prepared by NMFS. These documents provide a statement of the need for and objectives of the rule, which is also summarized in this preamble. In 1996, 140 persons were issued sablefish quota shares in the BS and may be affected by this rule. It is designed to relieve a restriction that negatively affects the ability of IFQ fishermen to harvest their full sablefish quotas. By protecting those harvests from killer whale predation, the rule is expected to have a positive economic impact on small entities.

Alternative 1 of the IRFA/FRFA (the status quo) was rejected in favor of Alternative 2, because Alternative 2 alone would reduce killer whale interactions with the fishery by allowing hook-and-line fishermen to switch to longline pot gear. Although switching from hook-and-line gear to longline pots would have direct costs, fishermen are expected to evaluate the balance of costs involved in switching gears with the profits of greater harvests obtained in the absence of killer whale predation. The preferred alternative also mitigates possible disadvantages to fishermen whose vessels may be unable to carry longline pot gear by establishing a 1-month closure to longline pot gear. During that time, hook-and-line fishermen will be able to fish without gear conflicts with longline pot gear or grounds preemption.

The Administrator, Alaska Region, NMFS, determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals. The express purpose of this rule is to reduce the interactions of commercial fisheries in the BS with killer whales.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements

Dated: September 12, 1996.

Gary Matlock,

Acting Deputy Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.24, paragraphs (b)(1)(iii) and (c)(4) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea subarea, except as provided in paragraph (c)(4)(ii) of this section.

* * * * *

(c) * * *

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

* * * * *

[FR Doc. 96–23852 Filed 9–12–96; 5:04 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 182
Wednesday, September 18, 1996

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96–906–2PR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Change in Reporting Requirements and Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the reporting requirements currently prescribed under the Texas orange and grapefruit marketing order. This document also announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to the currently approved information collection requirements issued under the marketing order. The marketing order regulates the handling of oranges and grapefruit grown in three counties in the Lower Rio Grande Valley in Texas and is administered locally by the Texas Valley Citrus Committee (committee). Shipments of oranges and grapefruit out of the production area must meet minimum standards of grade, size, quality and pack. Such shipments are subject to mandatory inspection. This rule would add language in the order's rules and regulations to require that all sales of over 400 pounds of oranges and grapefruit for resale inside the production area be covered by a ''Buyer's Certification'' form. This requirement would ensure that handlers are aware of and accept responsibility for complying with the order's requirements and that buyers do not intend to transport uninspected oranges and grapefruit out of the three-county production area.

DATES: Comments must be received by October 18, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax # (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833, Fax # (210) 682–5942; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670, Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. If adopted, this proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 15 handlers of oranges and grapefruit who are subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposal invites comments on a change to the reporting requirements currently prescribed under the Texas orange and grapefruit marketing order. This rule would add language in the

order's rules and regulations to provide for the use of a ''Buyer's Certification'' form (Certification Form). The use of this new form was unanimously recommended by the committee at a public meeting on May 29, 1996.

This proposed rule (1) Would establish a requirement that handlers complete a Certification Form on all sales over 400 pounds of oranges or grapefruit, or both, destined for resale inside the production area to help ensure that such oranges or grapefruit do not leave the production area without meeting order requirements, and (2) provides notice of a request for extension and revision of a currently approved information collection.

Implementation of the requirement to submit Certification Forms would result in a small increase in reporting requirements imposed on handlers. The added cost of complying with this requirement would be minimal and would be offset by benefits derived from enhanced compliance with the order and more complete statistical data beneficial to the entire industry. Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Under the order, Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are required to be inspected and are subject to grade, size, quality, container and pack requirements. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages which are not for resale; (3) under the 400-pound minimum quantity exemption provision; and (4) for relief or charity. In addition, fruit shipped to approved processors for processing are exempt from handling requirements. These handling requirements do not change substantially from season to season, and are in effect on a continuing basis subject to amendment, modification, or suspension as may be determined by the Secretary. Currently, the handling regulations under the order are effective from September 1 through June 30 each year.

Section 906.51 of the order provides authority for the committee, with the approval of the Secretary, to require that each handler furnish to the committee reports and other information as may be necessary for the committee to perform its duties under the marketing order.

The committee recommended the establishment of a requirement that handlers of Texas oranges and grapefruit complete a Certification Form on all sales of over 400 pounds of oranges or grapefruit or a combination of both that are not intended to leave the production area. (The order currently provides that 400 pounds of Texas oranges or grapefruit or a combination of both not for resale may be shipped per day outside the production area without having to meet marketing order requirements.) The form would require the following information: (1) Names and addresses of the seller and the buyer; (2) description and quantity of the oranges or grapefruit sold; and (3) the destination of the fruit. In addition, the buyer would certify that fruit that is subsequently taken outside the production area for resale will be inspected in accordance with the order and its rules and regulations. The information compiled from use of this form would also provide the committee, its staff, and the industry with valuable statistics on fruit sold and marketed within the production area.

Handling of oranges and grapefruit inside the production area is not regulated. While monitoring compliance during the 1995–96 season, committee staff became aware of a lack of documentation on fruit intended for use within the production area. Such fruit was on occasion found outside the production area without having been inspected and certified as meeting marketing order requirements. The committee recognized the need to make handlers responsible for ensuring that sales of their fruit intended for resale inside the production area, but subsequently leaving the production area, meet the provisions of the order. The Certification Form was developed to help track such sales. Currently, documentation on sales to peddlers and cash buyers, and other transactions not supported by an inspection certificate or a diversion report (used to track shipments for processing, relief, or charity), is minimal or non-existent. In the process of conducting its compliance program, the committee encountered difficulty in tracking movement of such citrus and detecting violations of the order.

The form would be completed by the seller (handler) in triplicate. The buyer would sign the certification statement on the form. One copy would be submitted by the handler to the committee within 7 days after the sale. One copy would be retained by the handler and the third copy would be given to the buyer. The forms would be reviewed by the committee's compliance staff as they are received and would be compared against handler records and inspection certificates. In addition, the form would also provide valuable statistical information on fruit sold and marketed for use within the production area. Currently, there is no tracking system for local use fruit. Collection of this information would fill a void in the committee's statistical database which would be used to determine total utilization of fruit and further assist the industry in making marketing decisions.

Throughout the past season, the committee considered possible options to monitor shipments of uninspected oranges and grapefruit. It was noted that local use fruit is presently not accounted for, which leaves a significant void in the committee's database. The committee considered, for example, compiling an ''approved peddler'' list, and allowing uninspected fruit to be sold only to those appearing on the list. This option was determined to be impractical for the industry, as such a list would change constantly and could never be accurately maintained. Development of the Certification Form was the only option believed to be viable. Use of the form would raise awareness of both the handlers' and buyers' responsibility to comply with the provisions of the marketing order. This option would result in the smallest increase in regulatory burden of the options considered, including the establishment of additional regulatory requirements, such as inspection of all shipments, regardless of destination. Therefore, the committee recommended that § 906.151 be amended by designating the existing paragraph in this section as (a) and adding a new paragraph (b).

Completion of the Certification Form at the time of the sale of fruit would total 5 minutes per form. The number of respondents is estimated to total 50, and the frequency of response would be 2 responses per week for a total of 30 weeks. The total information collection burden will be adjusted accordingly.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request an extension for and revision to a currently approved information collection for Texas oranges and grapefruit.

Title: Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.

OMB Number: 0581–0068.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Act, marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee the orders' operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Texas orange and grapefruit marketing order, which has been operating since 1960.

The Texas orange and grapefruit marketing order authorizes the issuance of grade, size, container and pack regulations. Regulatory provisions apply to oranges and grapefruit shipped outside of the production area, except for those shipments specifically exempt. The order also has authority for marketing research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the committee to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to orange and grapefruit supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. As shipments of Texas oranges and grapefruit are normally from September through June, these forms are utilized accordingly. A USDA form is used to allow producers to vote on amendments to the order. In addition, orange and grapefruit producers and handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

This proposed rule would establish a requirement that each handler complete a form provided by the committee whenever over 400 pounds of oranges and grapefruit are handled for resale inside the production area. This information will help track the flow of oranges and grapefruit handled for resale inside the production area where an inspection certificate or special purpose diversion form is not needed. The information would also be useful to the committee to determine those responsible for complying with the provisions of the marketing order. Completion of the Certification Form at the time of the sale of fruit would total 5 minutes per form. The number of respondents is estimated to total 50, and the frequency of response would be 2 responses per week for a total of 30 weeks. The total information collection burden will be adjusted accordingly.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarters staff, and employees of the committee. Committee employees will be the primary users of the information and AMS employees will be secondary users.

Estimate of Burden: Public reporting burden for this proposed collection of information is estimated to average .156 hours per response.

Respondents: Texas orange and grapefruit producers, handlers, and processors.

Estimated Number of Respondents: 189.

Estimated Number of Responses per Respondent: 18.95.

Estimated Total Annual Burden on Respondents: 561 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Texas orange and grapefruit marketing order and the Department's oversight of the program; (2) the accuracy of the collection burden estimate including the validity of the methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden of the collection, including through the use of automated or electronic technologies.

Comments must be received by November 18, 1996. Comments should reference OMB No. 0581–0068 and the Texas Orange and Grapefruit Marketing Order No. 906, and be submitted to Belinda G. Garza at the above address. All comments received will be available for public inspection during regular business hours at the same address.

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.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 906.151 the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 906.151 Reports.

* * * * *

(b) Each handler who sells over 400 pounds of oranges or grapefruit or a combination of both for resale inside the production area shall, for each transaction, report to the committee on a form approved by it the following information:

(1) Name and address of seller;

(2) Name and address of buyer;

(3) Description and quantity of oranges or grapefruit sold;

(4) Destination of fruit;

(5) A statement that the buyer certifies that fruit that is subsequently taken outside the production area for resale will be inspected; and

(6) Such other pertinent information as the committee may require.

The handler shall prepare the report in triplicate. The buyer shall sign the certification statement. The pink copy shall be submitted to the committee within 7 days. The green copy shall be retained by the handler and the blue copy shall be given to the buyer. Such form shall be reviewed by the committee staff and the information compiled for the committee's use.

Dated: September 10, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23833 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. AO–14–A64, etc.; DA–90–017; RIN: 0581–AA37]

Milk in the New England and Other Marketing Areas; Second Amplified Decision

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A64
1002	New York-New Jersey	AO–71–A79
1004	Middle Atlantic	AO–160–A67
1005	Carolina	AO–388–A3
1006	Upper Florida	AO–356–A29
1007	Southeast	AO–366–A33
1011	Tennessee Valley	AO–251–A35
1012	Tampa Bay	AO–347–A32
1013	Southeastern Florida	AO–286–A39
1030	Chicago Regional	AO–361–A28
1032	Southern Illinois-Eastern Missouri	AO–313–A39
1033	Ohio Valley	AO–166–A60
1036	Eastern Ohio-Western Pennsylvania	AO–179–A55
1040	Southern Michigan	AO–225–A42
1044	Michigan Upper Peninsula	AO–299–A26
1046	Louisville-Lexington-Evansville	AO–123–A62
1049	Indiana	AO–319–A38
1050	Central Illinois	AO–355–A27
1064	Greater Kansas City	AO–23–A60
1065	Nebraska-Western Iowa	AO–86–A47
1068	Upper Midwest	AO–178–A45
1075	Black Hills, South Dakota	AO–248–A21
1076	Eastern South Dakota	AO–260–A30
1079	Iowa	AO–295–A41
1106	Southwest Plains	AO–210–A52
1124	Pacific Northwest	AO–368–A19
1126	Texas	AO–231–A60
1131	Central Arizona	AO–271–A29
1134	Western Colorado	AO–301–A22
1135	Southwestern Idaho-Eastern Oregon	AO–380–A9
1137	Eastern Colorado	AO–326–A26
1138	New Mexico-West Texas	AO–335–A36
1139	Great Basin	AO–309–A30

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Second Amplified Decision.

SUMMARY: On May 16, 1996, the United States District Court for the District of Minnesota issued an opinion and order that directed the Secretary of Agriculture to issue a second Amplified Decision that more fully explains the conclusions reached in a Final Decision published in the Federal Register on March 5, 1993, and in the first Amplified Decision published in the Federal Register on August 17, 1994. This document responds to that order and supplements and clarifies the findings and conclusions of the Final Decision and first Amplified Decision.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: When the administrative proceeding in this matter was initiated, the Notice of Hearing listed separately the Lubbock-Plainview, Texas (Part 1120); the Texas Panhandle (Part 1132); and Rio Grande Valley (Part 1138) orders. These orders were merged effective December 1, 1991, under the name of the New Mexico-West Texas order, which is 7 CFR Part 1138. Additionally, the Georgia (Part 1007), Alabama-West Florida (Part 1093), New Orleans-Mississippi (Part 1094), Greater Louisiana (Part 1096), and Central Arkansas (Part 1108) orders were merged to form a new order named the Southeast order effective July 1, 1995 and is now 7 CFR Part 1007. The Memphis, Tennessee and Nashville, Tennessee, Orders were terminated effective July 31, 1993, and the Paducah, Kentucky, order was terminated on November 1, 1995.

Prior documents in this proceeding

Advance Notice of Proposed Rulemaking: Issued March 29, 1990; published April 3, 1990 (55 FR 12369).

Notice of Hearing: Issued July 11, 1990; published July 17, 1990 (55 FR 29034).

Extension of Time for Filing Briefs and Reply Briefs: Issued March 28, 1991; published April 3, 1991 (56 FR 13603).

Recommended Decision: Issued November 6, 1991; published November 22, 1991 (56 FR 58972).

Extension of Time for Filing Exceptions: Issued December 24, 1991; published January 6, 1992 (57 FR 383).

Final Decision: Issued February 5, 1993; published March 5, 1993 (58 FR 12634).

Proposed Termination of Order: Issued April 20, 1993; published April 27, 1993 (58 FR 25577).

Final Rule and Order: Issued April 20, 1993; published May 11, 1993 (58 FR 27774).

Referendum Order: Issued June 25, 1993; published July 1, 1993 (58 FR 35362).

Final Rule and Withdrawal: Issued August 9, 1993; published August 17, 1993 (58 FR 43518).

Correction of Final Rule: Issued November 29, 1993; published December 6, 1993 (58 FR 64110).

Amplified Final Decision: Issued August 10, 1994; published August 17, 1994 (59 FR 42422).

Related Prior Documents Germane to this Amplified Decision II

M–W Replacement:

Notice of Hearing: Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Recommended Decision: Issued August 3, 1994; published August 6, 1994 (59 FR 40418).

Final Decision: Issued January 27, 1995; published February 7, 1995 (60 FR 7290).

Final Rule: Issued April 6, 1995; published April 14, 1995 (60 FR 18952).

Examples of Setting/Changing Class I Differentials:

Final Decision: Issued October 7, 1966; published October 13, 1966 (31 FR 13272).

Final Decision: Issued August 14, 1991; published August 27, 1991 (56 FR 42240).

Final Decision: Issued September 27, 1978; published October 2, 1978 (43 FR 45520).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England and other marketing areas. The hearing was held, pursuant to the provisions of the AMAA and the applicable rules of practice (7 CFR Part 900), at Eau Claire, Wisconsin; Minneapolis, Minnesota; St. Cloud, Minnesota; Syracuse, New York; Tallahassee, Florida; and Irving, Texas, on September 5, 1990, through November 20, 1990. Notice of such hearing was issued on July 11, 1990, and published July 17, 1990 (55 FR 29034).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on November 6, 1991, issued his recommended decision containing notice of the opportunity to file written exceptions thereto. Following the submission of exceptions and comments on the recommended decision, a Final Decision was issued on February 5, 1993.

The Court's First Memorandum Opinion and Order

On April 14, 1994, the United States District Court for the District of Minnesota issued a memorandum opinion and order. The Court held that the Secretary of Agriculture's Final Decision for the ''1990 National Hearing'' on amending Federal milk orders was deficient in part. The Court found that the Secretary's decision to retain the existing Class I pricing structure was tantamount to a finding that the structure continued to satisfy the requirements of the AMAA as set out in § 608c(18). The Court stated this conclusion might or might not be supported by evidence from the 1990 National Hearing, but since explicit findings and explanations relative to the § 608c(18) factors were not issued, the Court was unable to make that determination. The final decision was remanded to the Secretary for 120 days for filing of an Amplified Decision.

An Amplified Decision, published in the Federal Register on August 17, 1994, provided additional findings and conclusions that addressed the material issue on the record of the 1990 National Hearing concerning Class I milk pricing and related issues. (See 59 FR 42422 *et seq.*). That document responded to the Court's questions and provided an amplified explanation of why the Secretary decided not to change the Class I pricing structure of Federal milk marketing orders and how such determination complied with the pricing requirements of § 608c(18) of the AMAA.

On May 16, 1996, the United States District Court for the District of Minnesota issued a second opinion and order expressing continued dissatisfaction with the Secretary's Final and Amplified Decisions. This second opinion again remanded the Final Decision to the Secretary of Agriculture for 120 days. According to the Court, the Final Decision, as further explained in the first Amplified Decision, failed to address adequately the Secretary's compliance with § 608c(18) of the AMAA.

After reviewing in detail the Court's second opinion and giving substantial consideration to the Court's views, the Secretary will attempt again to explain the final decisions to the Court. In this regard, however, the Secretary must first observe that the Court's conclusions appear to be based on an incomplete understanding of the purpose and evolutionary development of milk marketing orders which the Secretary attempts to clarify herein. Additionally, the approach to establishing minimum milk prices apparently envisioned by the Court would be virtually impossible to implement and, if attempted, would result in disorderly and unsettled market conditions. Therefore, before exploring in detail the Court's second opinion and the Secretary's Final and Amplified Decisions, the historical development of the classified pricing system, the realities of the dairy industry as it relates to the marketing of milk, the precise nature of the rulemaking underlying this litigation and the current status of the classified pricing system are considered.

Development of Classified Pricing for Milk

Milk marketing orders are not imposed by the Federal government. To the contrary, dairy producers, often with the support of handlers, petition the Secretary to create an order regulating the handling of milk. The Secretary then investigates market conditions affecting supply and demand in the proposed order area, including the price and availability of feed. The Secretary then proposes an order which producers are entirely free to ratify or reject. (*See* 7 U.S.C. § 608c(8)). Producers retain the right at all times to terminate their order. (*See* 7 U.S.C. § 608c(16)). Thus, if producers believe that the minimum prices established under their orders do not reflect supply and demand conditions, including the cost and availability of feed, they are entirely free to seek amendment or termination of their orders or to refuse to ratify an amended order.

As the Secretary explained in the first Amplified Decision, dairy producers, over time, elected to use the Minnesota-Wisconsin (M–W) price as the Class III price and to establish Class I prices under their orders. The M–W was first incorporated into the Chicago Regional order in 1961 and was adopted in all orders by 1975. In each and every instance in which the industry requested that an order be amended to adopt the M–W, the Secretary reviewed supply and demand conditions in the order, including the price and availability of feed. After this review and consistent with § 608c(18), the Secretary found that the M–W price was a superior and appropriate measure of all of the factors required by § 608c(18) than previous pricing formulae. In each case, producers ratified the amended orders incorporating the M–W price for milk used in Class III uses. Thus, for every order in the Federal order system, the Secretary has found, based on the § 608c(18) factors, that use of the M–W price is consistent with the AMAA. If it would be instructive, the Secretary will

supply the Court with decisions from the proceedings leading to the adoption of the M–W in each milk marketing order.

The Secretary also has established Class I differentials in all orders. These differentials, too, have been ratified by each order's producers. In setting these differentials, the Secretary (and the industry generally) has been aware for decades, the Upper Midwest region of the U.S. has produced much more milk than the region required to satisfy its demand for fluid milk. No other region of the country has ever generated such vast amounts of surplus milk nor does any other region do so today. Not surprisingly then, when other regions' supplies are insufficient to satisfy demand, the Upper Midwest tends to serve as the ultimate source of additional milk supplies. Thus, areas needing milk tend to receive it either through direct shipments from the Upper Midwest or from alternative supply areas that similarly can and do rely on the Upper Midwest's reserve supplies. The farther milk must move, the higher the cost of transportation and the resulting value of milk at the destination location. Therefore, Class I differentials are set at reasonable levels and provide the economic incentive to draw milk from surplus to deficit markets. They are largely reflective of the distance of the deficit market from the alternative supply areas, including the distance from the Upper Midwest. This system, based on the M–W price and aligned pricing, has applied for decades, was largely retained in the 1985 Food Security Act (FSA), and is reflected in the Class I differentials in place today. As the Secretary found in the Final Decision, this system did not require alteration because, among other articulated reasons, ''the industry for years has strongly supported a coordinated set of differentials based on fairly constant rates of change from market to market.'' (58 FR 12646).

It is important to note that, like the order-by-order adoption of the M–W as the Class III price, Class I differentials were not simply developed by imposing gradually increasing differentials based on distance from the Upper Midwest. Rather, in the context of adopting each order, the Secretary examined the prevailing prices which handlers were paying to attract supplies of fluid milk from nearest areas of available supply to their location. Class I prices therefore reflect the price necessary to attract milk to a particular location from the nearest sources of supply. Thus, for example, to the extent that Florida's local milk supplies are not sufficient to meet demand, it must look northward for such additional supplies. Because the ultimate source of supply for most of the nation tends to be the Upper Midwest, handlers in turn seek supplies in a south to north general pattern. For this reason, but not due to any predetermined single basing point approach, the Class I differentials are reflective of the realities of such a south-north continuum.

Three previous rulemaking decisions provide explicit examples in establishing or changing Class I differentials. Prevailing supply and demand conditions and alternative sources of supply, not distance from Eau Claire, determined the establishment of, or modification to, a market's Class I differential. In the Upper Florida promulgation decision, the nearest alternative source of supply was identified to be Nashville, Tennessee. (*See* 31 FR 13272). In two other decisions, Class I differentials were established based on prevailing supply and demand conditions and in light of the development of new alternative sources of supply. In the final decision merging three southwest orders into the New Mexico-West Texas marketing area (see 56 FR 42240), Class I differentials were established for the merged order in light of prevailing marketing conditions, the establishment of new alternative milk supplies, and the relationship between the new order and the adjoining Southwest Plains and Texas marketing areas. As a result, the Class I differential in the Texas marketing area was lowered to recognize the alternative milk supply available in New Mexico. Additionally, in the final decision concerning the New England marketing area (see 43 FR 45520), Class I differentials were adjusted in light of changed alternative sources of milk supply. In all three of these decisions, the distance from Eau Claire was not even mentioned or considered. If it would be instructive, the Secretary will supply the Court with decisions from other proceedings leading to the adoption of Class I differentials in each order which similarly set Class I differentials without Eau Claire being mentioned or considered.

The 1990 Rulemaking

Turning to the rulemaking hearings conducted in 1990 which are the subject of the Court's second opinion, it is important to stress that this rulemaking did not address in any way the continued viability of the M–W as the automatic reflector of those supply and demand factors required by § 608c(18). The 1990 rulemaking addressed, among other things, the concerns of certain sectors of the dairy industry that the Class I differentials established by the FSA should be overhauled. In response to those complaints, the Secretary invited the public to propose alternatives to the Class I pricing system which would provide a superior system for attaining the goals of the AMAA.

The numerous proposals submitted and supporting testimony ''portray[ed] a wide range of views regarding how Federal orders should be changed or not changed.'' (58 FR 12645). The organization representing the interests of the Minnesota Milk Producers Association (MMPA) (as well as other Upper Midwest dairy concerns) argued in the course of the hearing that a new approach to establishing Class I milk prices should be adopted. (*Id.* at 12646). MMPA's witness, however, like all other witnesses, did not provide any specific data on the price or availability of feed in any order market and nowhere suggested that the Secretary should tie classified prices to the price or availability of feed in any one or all Federal orders. (*See generally id.*). In fact, the witness for Upper Midwest interests (including MMPA) urged the Secretary to find that the cost of producing milk (presumably including the cost and availability of feed) did not vary across the order system. (*See id.* at 12646 (witness for Upper Midwest Federal Order Coalition (UMFOC) contended that ''costs of production are about the same across the country'')). (*See also Trans.*, Sept. 12, 1990, pg. 162 (there is ''equal cost of production across various regions.'')) Although not an issue in the rulemaking, the Secretary notes that this testimony supports the view that the M–W reflects market conditions in all orders and is properly included in the orders. After reviewing the various proposals for revamping the Class I pricing system, including the UMFOC's suggested flat Class I differential across the entire order system, (*see* 58 FR 12642) the Secretary determined to retain the extant Class I system because, based on his review of supply and demand conditions in all orders, the system furthered the goals and purposes of the AMAA.

The Secretary's Current Undertakings

The Class I pricing system, indeed many aspects of the current order system itself, are now under renewed examination by the Secretary. Specifically, in the 1996 Farm Bill (formally known as the Federal Agriculture Improvement and Reform Act of 1996), Congress mandated that the Secretary consolidate the current number of milk marketing orders from 33 to not fewer than 10, and not more

than 14 milk marketing orders, and examine the Class I differentials for each of those new orders. In this legislation, Congress also authorized the Secretary to consider the Class I pricing system for fluid milk without reference to the existing system of Class I differentials. (*See* §§ 143(a) (3) and (4)). Consistent with its longstanding approach, however, Congress did not question the use of the M–W as the price ''mover'' of other class prices, or the classified pricing system itself, in the 1996 Farm Bill.

In light of the directives of the 1996 Farm Bill, the Secretary has undertaken proceedings to consider whether to fundamentally reshape milk pricing methods and standards. The Secretary has indicated that all options will be explored. The Secretary intends to define a preliminary order structure later this year and may, during the ensuing 18 months, revise this structure based, among other sources, on industry comments and submissions. Furthermore, the Secretary at this time anticipates issuance of a final decision on these questions in approximately two years. It is certainly possible that the issues raised in this litigation will be rendered moot once the order program is reformed.

The Court's Second Opinion and Remand

Opinion Background In its opinion, the Court correctly observes that the Upper Midwest is a chronic over-producer of milk for fluid uses and that certain regions of the country are, at times, unable to produce adequate supplies of milk to satisfy this demand. The Court then concludes, erroneously, that the Secretary established an elaborate system of price controls (*i.e.*, Class I differentials) based directly on distance from the Upper Midwest to distant markets.

As noted above, Federal milk marketing orders are not an elaborate system established to address the Upper Midwest's chronic oversupply situation. As the Secretary explained in his first Amplified Decision, the orders must be viewed in the context of the marketing conditions which led to their gradual adoption. The AMAA, insofar as it related to milk, embodies Congress's recognition that dairy farmers lacked adequate bargaining power in the market to ensure a fair price for their milk. The inherent characteristics of milk itself contribute, in large part, to this market inequity. For example, milk is highly perishable, cannot be stored for long periods of time and is bulky and expensive to transport.

Furthermore, while demand for milk is relatively stable when measured season-to-season, demand varies on a daily basis. Therefore, to ensure that adequate supplies of fluid milk are available to supply the unpredictable and changing daily demand for milk, the industry must continually produce more milk than necessary.

Milk not demanded for fluid uses, the so-called ''reserve,'' is manufactured into dairy products such as butter, nonfat dry milk and cheese. Unlike fluid milk, manufactured dairy products can be stored and shipped economically and therefore compete in broader, indeed national, markets. Since, based on improved transportation and other factors, the market for manufactured dairy products has for decades been national in scope, these products compete on an equal footing regardless of where they are produced.

Manufactured products do, however, return a lower price to dairy farmers than milk used for fluid purposes. Before passage of the AMAA, dairy producers sometimes made uneconomic price concessions to maximize the use of their milk for fluid purposes. Thus, prior to the involvement of the Federal government, dairy farmers attempted to bargain with milk handlers for a flat price for all milk, regardless of use. But the pressures caused by the oversupplies of milk described above led to the breakdown of the flat pricing plans. Handlers would refuse to take excess milk from farmers at a flat price because it had a lower value when it was made into manufactured products. Handlers would respond by offering fluid milk to their customers at lower prices than their competitors. This in turn led to a lowering of the flat price paid to dairy farmers. In this regard, such pricing practices by handlers were viewed as ''predatory,'' placing the entire burden of destructive price competition solely on the backs of dairy farmers.

Groups of dairy farmers, represented by their cooperatives, attempted to address such pricing practices by developing a ''classified price system'' whereby milk was pooled and priced according to use, much like it is done today under the AMAA. Classified pricing had come into effect in a number of large markets in the country by about 1920. However, cooperative classified pricing plans were only partially successful because their success was dependent on participation by all groups in a market and because there remained certain advantages to staying out of these voluntary pricing arrangements. The economic depression of the 1930s accentuated the problems with voluntary classified pricing and pooling arrangements.

The AMAA, enacted in 1937, provided, insofar as it relates to milk, the framework for long-term price and market stability. Of great importance in understanding the purpose and operation of classified pricing, Congress adopted a supply-demand pricing standard to replace parity pricing. The supply-demand pricing approach is not, as the Court's second opinion suggests, a system of price controls. Rather, under this system, the minimum prices for milk established in orders respond to changing supply and demand conditions in the marketplace. Marketing orders, in this context, only establish the terms of trade between dairy farmers and handlers under a Government-supervised marketing plan. They assure, from a producer point-of-view, that a minimum uniform price (also known as the blend price) is returned to dairy farmers and, from a handler point-of-view, equity in the cost of obtaining a supply of milk. Such a plan tends to promote orderly marketing and efficient disposal of surplus milk not demanded by the fluid market, and mitigates the need by handlers to engage in predatory pricing practices.

Milk marketing orders have evolved since 1937 in response to ever-changing market conditions. As noted above, dairy farmers, including those in the Upper Midwest, concluded that orders ensured far more orderly marketing of their highly perishable product. Since most orders have remained in place, it is clear that dairy farmers are largely satisfied with the system—which has operated in approximately the same way for nearly 30 years—as they have rarely exercised their right under the AMAA to seek termination of their order. Congress, too, has not sought to reorder the essential nature of the system, including the universal adoption of the M–W price.

The foregoing provides a more complete description of the historical development of milk marketing orders and the purposes of classified pricing. In sum, it is not correct to characterize the order system, as the second Court opinion does, as the Government's response to overproduction in the Upper Midwest and periodic deficit conditions in other areas.

The Court's second opinion also states that milk prices are not determined solely by market forces, and that the Federal government has assured dairy farmers a minimum price for their milk for decades. For purposes of this discussion, the Secretary assumes that the Court has not confused the existence of the Dairy Price Support Program,

established under the Agricultural Adjustment Act of 1949 (AAA), which is applicable to all dairy farmers, whether or not associated with a Federal marketing order, with the market-determined prices enforced by milk marketing orders for farmers associated with each particular order. The AAA, through the Dairy Price Support Program, establishes a price floor that is designed to prevent further price reductions that might otherwise be warranted by supply and demand conditions.

Class I Differentials and Pricing

The Court states in its second opinion that Class I differentials are determined by the distance of a marketing area from Eau Claire, Wisconsin, and this alleged formula is ''the essence of controversy between the parties.'' (Opinion pg. 5). The Court further notes that this alleged formula constitutes a ''single basing-point pricing system.'' (Opinion pg. 5). The Court continues ''It is simply untrue to suggest, as the Secretary does, that it is irrelevant from which geographic point prices are determined. Different basing points (presumably reflecting different assumptions regarding market specific conditions) will necessarily yield different Class I differentials.'' (Opinion pg. 6.)

Class I differentials were not established based on a market's distance from Eau Claire. Class I differentials were established by observations of market specific supply and demand conditions in each marketing area. The price needed to attract milk to a consumption center is constrained by the cost of obtaining and transporting milk from an alternative supply area which results in the need to establish a differential level specific to each market in achieving this end. For example, the Secretary could choose any location (or locations) and align prices to other orders based on relative fluid demand. The resulting system would be the same as the current system; prices will increase to reflect the cost of attracting milk to the deficit areas, and those prices will similarly decrease, in a stair step continuum, as the ultimate source of alternative milk supply—the Upper Midwest—is approached.

That there is a high degree of correlation between distance from the Upper Midwest region and other marketing areas is interesting but is not, in and of itself, the basis for the Secretary's establishment of such differentials. As noted above, when setting Class I differentials, the Secretary did not simply gauge the distance of the market center of an order from Eau Claire and then add a differential representing transportation costs. To the contrary, in the promulgation of distinct and separate orders, the Secretary conducted intensive investigations of supply and demand conditions in each market. Germane to the investigations were the prevailing prices which handlers actually paid to attract a supply of milk and what supply sources the market actually tapped to get extra supplies. Only then was a Class I differential established for the market. Over time, as changing market conditions warranted, marketing orders were consolidated, covering increasingly larger geographical areas. As this occurred, there was heightened recognition of the need to coordinate class prices and to align Class I prices between orders. Thus, the mere fact that real-world market forces necessarily yielded, over time, an aligned Class I pricing system that correlates to geography simply does not mean that the enormous reserve quantities of milk in the Upper Midwest relative to other marketing areas (east of the Rocky Mountains) constitute a ''single basing point.'' The high degree of correlation between distance from the Upper Midwest, and another area's supply-demand relationship is reflective of this reality. It justifies the current Class I differentials, not the other way around.

Of note, in the 1990 rulemaking, the Secretary solicited proposals which would, in order to be adopted, necessarily demonstrate that these assumptions were incorrect. As the Secretary found, industry participants proposed either no change, minor change, and in some instances, radical change, to the Class I pricing system. None demonstrated that the current Class I prices were not functioning, as a matter of demonstrable supply and demand patterns, sufficiently to attain the goals of the AMAA.

Class I Differentials and Class I Pricing and § 608c(18) Findings

As the Secretary explained at length, the M–W price which forms the basis for all classified pricing, automatically incorporates the price and availability of feed as well as numerous other factors. In this regard, in the underlying proceeding MMPA argued that the Secretary should find that the cost of production is uniform throughout the order system. To the extent that MMPA is correct, then, the M–W price must already reflect the cost of producing milk, including feed. Thus, under MMPA's view, by incorporating the M–W into all three classified prices the Secretary presumably has satisfied § 608c(18).

The validity of the M–W as an automatic reflector of the § 608c(18) pricing factors has become a central issue in this proceeding even though it was specifically excluded from consideration at the 1990 rulemaking. (*See* 55 FR 29034). The M–W price was discussed in the First Amplified Decision, but only because the Court's first opinion seemed to confuse the role of the M–W with whether or not there was a standard for determining how much reserve milk should be, or needs to be, associated with each marketing order. Nevertheless, the Secretary also explained how the M–W reflects the § 608c(18) pricing criteria factors and acts as the ''mover'' for all classified prices.

The Court expresses dissatisfaction with the M–W because, in its view, the M–W does not directly reflect supply and demand conditions, including the price and availability of feed, in each marketing order. The Secretary notes, however, that the M–W has been a component of every marketing order for well over 20 years in some orders and over 30 years in many others. Additionally, Congress has never suggested that the Secretary's reliance on this measure was not wholly consistent with the AMAA. Furthermore, far from maintaining that Class III prices must be order-specific, the MMPA, like every other witness at a recent national hearing concerning the M–W, argued that a uniform Class III price be used in all Federal orders. (*See* 60 FR 7276 (MMPA proposed that the Federal milk support price established under the AAA of 1949 be the Class III price)). Thus, Congress, the Secretary and the dairy industry all understand that a uniform Class III price can and should be used in all orders as the ''mover'' of Class I and Class II prices under the AMAA.

As the Court recognizes, the AMAA requires that the Secretary consider the various factors affecting supply and demand in setting minimum prices. The statute also prescribes that milk marketing orders ensure an adequate, but not excessive, supply of pure and wholesome milk and otherwise be in the public interest. Using the M–W price accomplishes precisely these goals by incorporating the fluctuations in supply and demand, as reflected by free market transactions, into classified pricing. Class I pricing therefore responds to, rather than dictates, supply and demand. The cost and availability of feed, by contrast, represent only two aspects of the supply side of the equation. Moreover, as supply factors, feed costs and availability similarly change and which the statute

specifically requires to be considered. It would not be appropriate for the Secretary to set prices which responded to constantly fluctuating conditions on one sole (and narrow) measurement when there are a host of other considerations affecting the supply of milk that themselves constantly change. Thus, to set milk prices based on these significant but limited factors rather than on the M–W, which automatically incorporates these aspects of supply, would tend to have the effect of ignoring all of the factors of supply and demand required for compliance with § 608c(18).

Of particular note, the Secretary conducted a subsequent national hearing to address the M–W price in 1992. The Secretary's call for proposals for the hearing (57 FR 26790) explicitly indicated that any proposals that would change the M–W method would have to be justified under the supply and demand pricing standards specified in § 608c(18). Since that hearing, the Secretary has determined that a modified M–W price, adjusted by a product price formula, and now referred to as the Basic Formula Price (BFP), best satisfies the statutory pricing criteria of the AMAA. Accordingly, the Secretary amended all Federal milk orders and producers everywhere affirmed the amended orders. The BFP essentially retains the features of the old M–W. It is a market-determined price, free of government regulation that represents the basic value for milk and used to adjust Class I and Class II prices. It is the basis for establishing the pricing terms-of-trade between dairy farmers and handlers because it continually responds to changing supply and demand factors as prescribed by § 608c(18). The use of a product price formula is a minor refinement that updates a previous month's price to better reflect current marketing conditions. In the final decision for improving the M–W, (60 FR 7290) the Secretary found that the economic rationale stated when the M–W was first adopted remains sound today as it was when it was adopted order-by-order from 1961 until universally adopted in 1975.

Class I Differentials and Class I Prices

As noted above, the M–W price is the key component in the Class I price, representing the many supply and demand factors referenced in § 608c(18). The M–W price does not, however, reflect one factor uniquely relevant to Class I fluid milk pricing: the cost of transporting milk from alternative supply sources. When the Class I differential, which largely reflects transportation costs, is added to the M–W price, the minimum Class I price in each market is set. As marketing orders were consolidated, covering ever increasingly larger geographical areas, there was an increasing need to align Class I prices among the orders. Inter-market alignment of Class I prices is necessary so that the minimum prices do not exceed the cost of obtaining milk from alternative sources of supply. Such pricing constraints address § 608c(5)(A) which requires, among other things, uniform prices to handlers.

The Class I differential serves as that economic incentive to move milk from supply to areas where it is demanded. In reality, some milk is produced just about everywhere. Therefore, the mix of milk produced near where it will be consumed, along with milk needed from more distant locations needs to be only high enough to bring forth that additional supply that will satisfy consumer demands.

It is important to reiterate that dairy farmers are not paid the Class I price for their milk. Class I prices are minimum prices paid by handlers who use milk for fluid purposes. Their alignment both within an order and between orders is critical so that all handlers compete on an equal footing for attracting milk to their location. Dairy farmers, by contrast, receive a blend price for their milk regardless of how it is used. The blend price is neither intended to be aligned by the Secretary, nor is it intended to correlate to geography. The blend price that producers receive represents the sum total of local supply and demand conditions for milk in each marketing order area. Blend price changes (and differences in blend prices among orders) provide the economic signal for producers to make production decisions and for making marketing adjustments.

General Findings

The findings and determinations set forth herein have been issued in response to an opinion and order of the United States District Court, District of Minnesota, Fourth Division, issued on May 16, 1996. The findings and determinations supplement those that were previously set forth in the Final Decision issued on February 5, 1993, and published in the Federal Register on March 5, 1993, and in an Amplified Decision issued on August 10, 1994, and published in the Federal Register on August 17, 1994, with respect to the New England and other Marketing Area orders. No additional regulatory changes are necessary as a result of this second Amplified Decision.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

Milk marketing orders.

Dated: September 10, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–23825 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

RIN 1117–AA40, DEA Number 142N

Guidelines for Providing Controlled Substances to Ocean Vessels

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: DEA is considering whether to propose amending the regulations regarding the supply of controlled substances to ocean vessels to provide a means of supply more consistent with current industry practices for other materials. The decision on whether to propose amendments and the extent of any such amendments will be based on the information and comments submitted in response to this advance notice of proposed rulemaking and DEA's experience with the existing procedures and practices for supplying controlled substances to vessels.

DATES: Information and comments should be submitted on or before November 18, 1996.

ADDRESSES: Comments should be submitted in duplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attn: Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: Title 21, Code of Federal Regulations (CFR), Section 1301.28 provides a mechanism for the transfer of controlled substances to ocean vessels for use in emergency

kits. Vessels may obtain controlled substances either through the services of a medical officer who is employed by the owner or operator of the vessel and is registered with DEA as a practitioner, or, in the absence of a medical officer, through the master or first officer of the vessel personally appearing before a distributor registrant and receiving the controlled substances directly.

If a medical officer is ordering the controlled substances, he or she shall submit the order to a distributor or, when allowed pursuant to 21 CFR 1301.28(f), a pharmacy. When filling the order, the distributor or pharmacy must handle the transaction as a normal distribution subject to all of the requirements of the law and regulations regarding the distribution of controlled substances. If Schedule II controlled substances are being ordered, a properly completed and signed DEA Order Form (DEA Form-222) must be received prior to filling the order. Further, all controlled substances must be shipped directly to the medical officer at his or her registered address. The distributor or pharmacy may not ship the controlled substances to another person or address. The medical officer shall transfer the controlled substances to the vessel only at a location within the United States. The shipment of controlled substances to a foreign location can be accomplished only by a registered exporter pursuant to a valid export permit or declaration and authorization of the foreign government; to do so otherwise could be a criminal violation of the Controlled Substances Act (CSA) and U.S. International Treaty obligations.

In the absence of a registered medical officer, the master or first officer of an ocean vessel may obtain controlled substances by appearing personally before a distributor or an authorized pharmacy registrant, and by presenting proper identification and a written requisition for the controlled substances. The requisition must be prepared on the vessel's official stationery or purchase form and must contain the information required by 21 CFR 1301.28(d)(2). The distributor or pharmacy shall record the distribution in the manner required by 21 CFR 1301.28(d)(4). The master or first officer of a vessel must appear personally before the registrant to receive the controlled substances.

Issues regarding practical compliance with the regulations have arisen, including the use of contract practitioners, the shipping of controlled substances to other than a registered location, exporting controlled substances without an exporter registration and export permit or declaration, repacking or relabelling controlled substances in violation of the CSA, and, in the absence of a medical officer, shipping controlled substances to a vessel rather than requiring a personal appearance by the master or first officer.

DEA has also received comments from wholesalers and owners/operators of vessels expressing concerns regarding the regulations and the impact they have on the delivery of controlled substances to the vessels. The primary concern is the requirement that controlled substances ordered by a medical officer must be shipped to the medical officer's registered location by the distributor. The medical officer then must ship the controlled substances to the vessel. The commentors have objected that this requirement delays the delivery of the controlled substances to the vessel and increases the potential for diversion of the substances. Comments have also been received regarding the use of medical officers, the distribution of controlled substances to vessels in foreign ports, and the use of ship's agents to help effect the delivery of controlled substances to the vessels.

In order to better understand the circumstances under which the maritime industry operates and to determine what regulatory adjustments might be possible to allow a more efficient and practical means to provide controlled substances to ocean vessels while maintaining controls against the diversion of controlled substances, DEA is requesting information and comments regarding the following:

1. What industry standards or requirements are there regarding the acquisition, storage, and dispensing of controlled substances aboard ocean vessels? If there are standards or requirements, is there a mechanism for ensuring compliance and sanctioning those that fail to comply? Further, do the standards or requirements apply to all vessels, including foreign flag vessels, or do they apply only to U.S. flag vessels?

2. Are there standardized procedures for delivering materials/supplies to vessels when they are in port? What provisions are there for the safekeeping/security of sensitive materials/supplies prior to the actual delivery to the vessel?

3. What duties do ship/port agents and ship chandlers perform? What legal responsibilities must they satisfy and to whom are they responsible? Are there specific guidelines or requirements that must be adhered to and a mechanism for enforcing compliance?

In addition to developing background information concerning the operations of the maritime industry with respect to providing vessels with controlled substances, DEA is also seeking comments and proposals from interested parties regarding the impact of the current regulatory requirements and possible alternative procedures that might better serve the industry while preserving the necessary safeguards to prevent diversion. Areas of specific interest would include the use of contract medical officers, the shipment of controlled substances from the distributors to the vessels, and whether ship/port agents and chandlers can participate in the process. DEA also welcomes any comments and suggestions on related issues regarding the supply of controlled substances to ocean vessels.

Interested persons may, on or before November 18, 1996, submit to the Deputy Assistant Administrator, Office of Diversion Control, Attn: Federal Register Representative/CCR (address above) two copies of the written information and comments regarding this advance notice of proposed rulemaking.

Dated: August 19, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 96–23816 Filed 9–17–96; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–030–0006; FRL–5611–8]

Approval and Promulgation of Implementation Plans; Arizona—Phoenix Nonattainment Area; Carbon Monoxide Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as meeting the requirements of sections 172(c)(3) and 187(a)(1) of the Clean Air Act (CAA) and EPA guidance, the 1990 base year carbon monoxide (CO) emission inventory for the Phoenix CO nonattainment area. This document also discusses EPA's review of the 1995 projected year inventory for the Phoenix area.

DATES: Written comments on this proposal must be received by October 18, 1996.

ADDRESSES: Written comments should be sent to: Wienke Tax, A–2–1, U.S. Environmental Protection Agency,

Region 9, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this document, Docket No. 96–AZ–003, may be inspected and copied at the following location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket. U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, Mobile Sources Section, A–2–1, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1223.

SUPPLEMENTARY INFORMATION:

I. CAA Requirements and EPA Guidance for Emission Inventories

Sections 172(c)(3) and 187(a)(1) of the CAA require that a comprehensive, accurate, and current base year inventory of actual emissions be submitted to EPA as a state implementation plan (SIP) revision for each area designated as nonattainment and classified moderate or serious for carbon monoxide.[1] EPA has provided guidance to States for developing these CO inventories, most recently in *Emission Inventory Requirements for Carbon Monoxide State Implementation Plans,* (EPA–450/4–91–011) March, 1991 (''*Emission Inventory Requirements*''). While not an explicit requirement of the CAA, projected inventories are closely related to the base year inventory, and it is reasonable to review them in conjunction with the base year inventory.

A technically-sound emissions inventory is important for a number of reasons. First, it is used to identify pollutant sources for new or additional controls and so provides a basis for the control strategy. Second, the inventory provides a means of assessing progress in achieving reductions from existing controls. Finally, both current and projected inventories are used as inputs to air quality modeling to demonstrate attainment of the national ambient air quality standards (NAAQS).

The Clean Air Act requires that emissions inventories be comprehensive, accurate, and current. To be comprehensive, the inventory must include all stationary point and area sources, non-road mobile sources, and on-road mobile sources. To be accurate, the inventory must be based on data representative of sources within the nonattainment area. To be current, the inventory must represent 1990 (the year of the CAA enactment) or later.

A. Requirements for Base Year Inventories

The base year inventory is the primary inventory from which all other CO inventories are derived. The base year inventory is defined in the CAA as a ''current inventory'' which EPA interprets to mean 1990. See ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' 57 FR 13498, 13530 (April 16, 1992). Annual emission inventory estimates are adjusted to represent the CO season weekday inventory (the ''planning inventory''). EPA recommends a three month peak CO season as the basis for the planning inventory estimates. See *Emission Inventory Requirements,* page 11.

Stationary sources are grouped into point and area sources. Point sources are any stationary source emitting more than 100 tons per year of CO. Area sources generally include small stationary sources (e.g., stationary internal combustion engines) and ubiquitous emissions not associated with a permit (e.g., fireplaces). Mobile source estimates are divided into on-road and non-road categories. Emissions inventories for on-road mobile sources (e.g., automobiles, motorcycles, buses, and trucks) are generally developed using the latest version of MOBILE, EPA's mobile source emission factor model. The non-road mobile source inventory includes emissions from categories ranging from lawn mowers to marine vessels.

In documenting its on-road mobile source inventory, states must report on how on-road vehicle emission factors and vehicle miles travelled (VMT) estimates were determined. The state must fully document how the most recent MOBILE model (MOBILE5a) was used to estimate emission factors for the vehicle fleet. For VMT, the state should describe the methodology employed to generate VMT data and the key assumptions and inputs to the process. Finally, the state must describe how the VMT data were combined with the emission factors to produce mobile source emissions estimates. See *Emission Inventory Requirements,* page 54.

In its emissions inventory submittal, a state is also required to describe the implementation of the state's emission inventory quality assurance (Q/A) program and the results achieved by that program. For all source category types, the Q/A discussion must address the completeness of the inventory, reasonableness of the emissions estimates, and relative accuracy of the data. See *Emission Inventory Requirements,* page 55.

A detailed discussion of EPA's emission inventory requirements can be found in the Technical Support Document (TSD) for this rulemaking as well as in the cited guidance documents. The TSD and all cited documents can be requested from the contact person listed at the beginning of this notice.

B. Guidance on Projected Emissions Inventories

Future year inventories are needed for projecting and modeling attainment. Future year inventories are developed using base year inventory estimates adjusted using growth and control factors. EPA's guidance for developing projected year inventories is found in *Procedures for Preparing Emissions Projections,* (EPA–450/4–91–019) July, 1991.

Inventory projections attempt to project how the combination of future emission controls and changes in source activity will influence future emission rates. Growth factors are developed using socioeconomic forecasts (i.e., population, housing, employment, and motor vehicle activity) and Standard Industrial Classification data. Growth rates for motor vehicles consider projected changes in vehicle miles traveled, trips, and vehicles in use. Control factors are used to adjust future year inventory estimates to account for reductions from adopted and scheduled measures. All growth and control factors and their derivation should be thoroughly documented.

All emissions projected for future years should be based on the same inventory methodologies and computational principles as the base year emissions. For example, if a travel demand model is used for estimating travel in the base year, the same model should be applied to estimate travel demand for projected years. Using the same methodology ensures consistency in format and content between base year

[1] At the time of the SIP submittals that are the subject of today's notice, Phoenix was classified as moderate and, because its design value is under 12.7 ppm, was considered a low moderate area. EPA has recently found that the Phoenix area failed to attain the CO NAAQS by the statutory deadline. See 61 FR 39343 (July 29, 1996) As a consequence of this finding, the area has been reclassified to ''serious'' under section 186(b)(2). As a result, the area is now subject to the section 187(b) requirements for serious CO areas. These requirements include those applicable to CO areas with design values between 12.7 ppm and 16.4 ppm (high moderate areas) in section 187(a). For the purpose of today's action, however, the relevant CAA requirements are those that apply to low moderate CO nonattainment areas.

and projection year emissions estimates and prevents possible spurious inventory differences due to changes in methodology.

For further information on requirements for emission inventory projections, see the TSD.

II. The Maricopa CO Emissions Inventory Submittal

The Arizona Department of Environmental Quality (ADEQ) initially submitted the 1990 base year (annual and average daily emissions) as well as projected 1995 and 2005 CO inventories for the entire Phoenix nonattainment area on November 15, 1993 as part of the Maricopa Association of Governments (MAG) *1993 Carbon Monoxide Plan for the Maricopa County Area* (*CO Plan*). On April 4, 1994, ADEQ submitted updated and improved inventories as part of MAG's 1993 Carbon Monoxide Plan for the Maricopa County Area—*Addendum* (*Addendum*).[2] These revised inventories reflected adjustments to growth factors and the impact of measures in Arizona House Bill 2001. Both submittals became complete by operation of law under CAA section 110(k)(1)(B) on May 15, 1994 and October 8, 1994, respectively.

The Maricopa County Division of Air Pollution Control (MCAPC) prepared the stationary (point and area) and non-road mobile source portions of the inventories, while MAG Transportation and Planning Office prepared the transportation data and the on-road mobile sources emissions estimates. Quality assurance/quality control procedures were performed by MCAPC and ADEQ.

A. Baseline (1990) Emissions Inventory

Because CO violations in Phoenix occur primarily from November through January, November and December of 1989 and January of 1990 were chosen as the basis for the planning inventory, as per EPA guidance. See *Emission Inventory Requirements,* page 11. The emissions data section of the inventories contains a summary of 1990 emissions data by source type (point, area and mobile), for both average daily emissions and annual emissions. See ''1990 Base Year Carbon Monoxide Emission Inventory for the Maricopa County, Arizona Nonattainment Area,'' MCAPC, August 1993 (located in Appendix B, Exhibit 1 of the *CO Plan*) (''EI Documentation'') at page 1–6. Inventory development procedures are discussed separately for point, area, non-road mobile and on-road mobile sources in the EI Documentation.

MCAPC was the lead agency responsible for developing the point source inventory. All methods for collecting point source data and estimating emissions were documented, and detailed emissions information was provided (see Chapter 2 of the EI Documentation) and entered into EPA's Aerometric Information Retrieval System (AIRS). Point source base year emissions totalled 1299 tons CO per year (<1% of the inventory, without accounting for on-road mobile source emissions) and 8.7 tons CO per average CO season day (<1% of the inventory). See EI Documentation, page 1–6.

MCAPC evaluated all area sources included in EPA's guidance document[3] for their significance in Maricopa County except residential incineration; open burning at industrial, commercial/institutional, and residential sources; and charcoal grilling. The first two categories are prohibited by law; charcoal grilling was not addressed because suitable emission factors and activity data were not available and because emissions contributions from this category were judged to be negligible. See EI Documentation, page 3–1. A rule effectiveness (RE) factor of 80 percent was applied to source categories subject to regulation, as recommended by EPA for all categories except woodburning. Rule penetration was estimated per EPA guidance. See EI Documentation, page 3–1. While EPA recommends a 50 percent RE factor for woodburning, woodburning is only a small fraction of the Maricopa CO inventory, so the assumption of a 80 percent RE factor is insignificant in this instance. Total CO base year emissions from area sources were 13,337.8 tons per year in 1990 (7.3% of inventory, without accounting for on-road mobile source emissions), and 87.65 tons per average CO season day (7.7% of inventory). See EI Documentation, page 1–6.

Non-road source categories inventoried in the *CO Plan* include aircraft, locomotives, and non-road equipment sources. EPA's Office of Mobile Sources prepared the emissions estimates for the non-road equipment source categories. See Chapter 3 of the EI Documentation. These categories included recreational vehicles, construction equipment, industrial/commercial equipment, lawn and garden equipment, and farm equipment. Emissions calculations were presented for aircraft (commercial, military, general aviation) and locomotives, per EPA guidance. See *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources* (EPA–450/4–81–026d Revised) 1992. (*Procedures, Mobile Sources*). Non-road CO emissions for 1990 totalled 167,303 tons (91.9% of inventory, without accounting for on-road mobile sources), while average daily CO season emissions totalled 238 tpd (20.8% of inventory). See EI Documentation, page 1–6.

On-road mobile sources were inventoried per EPA guidance found in *Procedures, Mobile Sources.* MAGTPO prepared the 1990 VMT estimates, using the Highway Performance Monitoring System (HPMS) data for 1990 collected by the Arizona Department of Transportation (ADOT). The HPMS data were supplemented by traffic count data and estimates of total street mileage in the CO nonattainment area from MAGTPO. The *CO Plan* contains an extensive discussion of the conversions performed on the HPMS data to produce inventory-compatible VMT estimates. See EI Documentation, Chapter 5.

The version of the MOBILE model used to develop on-road mobile emission factors for the November 1993 and March 1994 submittals was MOBILE5. The *CO Plan* fully documents the inputs to the model. See EI Documentation, Chapter 5. On-road mobile source emission factors and emissions are presented by vehicle class and roadway type. Total CO baseline emissions from on-road mobile sources totalled 807.7 tons per CO season day (70.7% of inventory). See EI Documentation, Chapter 5.

Chapter 6 of the EI Documentation contains a discussion of quality assurance and quality control (QA/QC) procedures used by the various agencies in developing the inventory. The QA/QC procedures included checks for accuracy, reasonableness, and completeness, including reviews by independent parties. More detailed procedures included reviewing the descriptive information contained in each section to assure completeness, clarity, and correctness; examining formulae, calculations and conversions to assure freedom from errors and inconsistencies; evaluating data quality to assure the worth and usefulness of

[2] On August 9, 1993, EPA issued a SIP call under section 110(k)(5) of the CAA that required Arizona to submit a plan to EPA that demonstrated attainment of the CO NAAQS in the Phoenix area by December 31, 1995. As an area with a design value under 12.7 ppm, the State would not otherwise have been required to submit an attainment plan for the Phoenix area. See section 187(a). CAA section 187(a)(1) requires the submittal of a comprehensive, accurate, current inventory of actual emission for all CO nonattainment areas whether or not they have a separate requirement to submit an attainment demonstration.

[3] Procedures for the Preparation of Emission Inventories for Precursors of Ozone, Volume I, (EPA 450/4–88–021) December 1988.

the inventory; and assessing, where possible, the significance of the calculated quantities to assure accuracy and justifiable precision.

EPA has concluded that the baseyear emission inventories in the MAG *CO Plan* and *Addendum* conform to EPA's guidance and the CAA requirements for CO inventories and are therefore proposed for approval.

B. Projected Emissions Inventory

The *CO Plan* contained a 1995 attainment year projected emission inventory. See *Addendum*, Exhibit 3. This inventory was prepared by MAG using the methodologies in EPA's guidance.[4] The *Addendum* modified the projected inventory in several respects. First, in response to comments received during the public hearing on the Plan, MCAPC revised the growth factors used to project 1990 emissions to 1995. Secondly, in November 1993, the Arizona legislature passed H.B. 2001 which included additional commitments for measures designed to bring the region into attainment for CO. A few minor additional adjustments to modeling inventories were also made and the effects of the existing oxygenated fuels program on non-road emissions was included. Overall, these changes resulted in slight decreases (1–4 percent) in projected CO emissions for future years.

EPA has concluded from its review of the 1995 projected year emission inventory in the MAG *CO Plan* and *Addendum* that it conformed EPA's guidance for CO projected inventories.

III. Summary of EPA Actions

Because EPA has concluded that it conforms to EPA guidance for base year emission inventories, EPA is proposing to approve, pursuant to sections 172(c)(3) and 187(a)(1) of CAA, the 1990 CO base year inventory for the Maricopa CO nonattainment area. EPA is also finding that the 1995 projected year inventory conforms to EPA guidance.

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

[4] While the *CO Plan* and *Addendum* include a year 2005 CO projected emission inventory, EPA did not review that inventory. Neither the Clean Air Act nor EPA guidance requires states to demonstrate maintenance after the applicable attainment date until an area requests redesignation to attainment under section 175A(a).

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under subchapter I, part D of the Clean Air Act, do not create any new requirements, but simply approve requirements that a state is already imposing. The action proposed today is simply the approval of technical information required to be developed under the CAA and imposes no state or federal requirements on any entity. Therefore, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–23822 Filed 9–17–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Parts 52

[FL–60–1–6929b; FRL–5609–4]

Approval and Promulgation of Lead State Implementation Plan for the State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revision submitted by the State of Florida on August 18, 1994, through the Florida Department of Environmental Protection. The revision includes amendments to the rules in the Florida Administrative Code, Chapters 17–275, Air Quality Areas, and 17–296, Stationary Sources—Emission Standards. These revisions provide for the control of lead emissions from facilities in the State of Florida, and will replace the Federal Implementation Plan requirements codified in 40 CFR 52.535.

In the final rules section of this Federal Register, the EPA is approving the State of Florida's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A

detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 18, 1996.

ADDRESSES: Written comments on this action should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 100 Alabama Street, SW, Atlanta, GA 30303–3104

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Programs Branch at (404) 347–3555 extension 4195 and at the above address.

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

Dated: August 15, 1996.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 96–23821 Filed 9–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 61, 63 and 70

[AD–FRL–5612–1]

Clean Air Act Proposed Interim Approval, Operating Permits Program; State of Alaska and Clean Air Act Proposed Approval in Part and Proposed Disapproval in Part, Section 112(l) Program Submittal; State of Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval, and proposed approval in part and proposed disapproval in part.

SUMMARY: EPA proposes interim approval of the operating permits program submitted by the Alaska Department of Environmental Conservation for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EPA also proposes approval in part and disapproval in part of the program submitted by the Alaska Department of Environmental Conservation for the purpose of implementing and enforcing the hazardous air pollutant requirements under section 112 of the Act.

DATES: Comments on this proposed action must be received in writing by October 18, 1996.

ADDRESSES: Comments should be addressed to David C. Bray, Office of Air Quality, OAQ–107, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the State's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Office of Air Quality, OAQ–107, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; telephone (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Title V Background

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

EPA must apply sanctions to a State 18 months after EPA disapproves the program. In addition, discretionary sanctions may be applied any time during the 18-month period following the date required for program submittal or program revision. If the State has no approved program two years after the date required for submission of the program, EPA will impose additional sanctions, where applicable, and EPA must promulgate, administer, and enforce a Federal permits program for the State. EPA has the authority to collect reasonable fees from the permittees to cover the costs of administering the program.

B. Section 112 Background

Section 112(l) of the Act established new, more stringent requirements for a State or local agency that wishes to implement and enforce a hazardous air pollutant program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to the State and local agencies could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and local hazardous air pollutant rules and programs under section 112 through formal notice and comment rulemaking. Now State and local air agencies that wish to implement and enforce a Federally-approved hazardous air pollutant program must make a showing to EPA that they have adequate authorities and resources. Approval is

granted by EPA through the authority contained in section 112(l), and implemented through the Federal rule found in 40 CFR part 63, subpart E if the Agency finds that: (1) The State or local program or rule is ''no less stringent'' than the corresponding Federal rule or program, (2) adequate authority and resources exist to implement the State or local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or local program or rule is otherwise in compliance with Federal guidance.

II. Proposed Action on Title V Submittal and Implications

A. Analysis of State Title V Submittal

1. Support Materials

On May 31, 1995, the Alaska Department of Environmental Conservation (referred to herein as ''ADEC,'' ''the Department,'' ''Alaska'' or ''the State'') submitted a title V program for EPA review and approval. EPA notified the State in writing on July 13, 1995, that the submittal was complete. The State submitted additional information to EPA to supplement its May 31, 1995 submittal on August 16, 1995, February 6, 1996, February 27, 1996, July 5, 1996, and August 2, 1996. EPA considers these supplemental submittals to be a material change to ADEC's May 31, 1995 program submittal and therefore extends its official review period by 8 months to January 31, 1997.

Section II of the Alaska submittal addresses the requirement of 40 CFR part 70.4(b)(1) by describing how the State intends to carry out its responsibilities under the part 70 regulations. An implementation agreement is currently being developed between ADEC and EPA. EPA has deemed the program description to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Section IV of the Alaska submittal includes a legal opinion from the Attorney General of Alaska addressing the thirteen program elements set forth in 40 CFR part 70 that are specifically required by title V and 40 CFR part 70, as well as several additional program elements. With the exception of the proposed interim approval items discussed below, this opinion letter demonstrates adequate legal authority to implement all aspects of the title V operating permits program in Alaska.

Alaska has submitted draft copies of its permit application and permit forms, as required by 40 CFR 70.4(b)(4). Final versions of these forms will need to be available in time to implement the program.

In summary, EPA believes that Alaska's title V operating permits program substantially meets the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; section 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.8 for permit review by EPA; section 70.5 for criteria which define insignificant activities; section 70.11 for requirements for enforcement authority; and section 70.5 for complete application forms. The issues that EPA proposes the State must address in order to obtain full approval are discussed below under ''Options for Program Approval and Implications.''

The full program submittal and the Technical Support Document (TSD) are contained in the docket at the address noted above and provide more detailed information on the State's program.

2. Regulations and Program Implementation

a. Regulations. The Alaska title V operating permits program is authorized by the Air Quality Control Act, Title 46, Chapter 14 of the Alaska Statutes. The State of Alaska revised its Air Quality Control Regulations (18 Alaska Administrative Code (AAC) 50) to implement the requirements of 40 CFR part 70 and the Alaska Air Quality Control Act. These revisions were adopted on May 17, 1995 and, together with the enabling legislation, become effective upon EPA's interim approval of Alaska's title V operating permit program. Additional revisions to these rules were adopted on February 22, 1996, April 9, 1996, and July 3, 1996. These rules and statutes, as well as other rules and statutes governing State permitting and administrative actions, were submitted by Alaska with evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

Title 18, chapter 50 of Alaska's regulations contain requirements pertaining to both title V and non-title V sources. Therefore, this notice proposes to approve certain regulations within 18 AAC 50 as part of Alaska's title V program. The TSD identifies the title V-related regulations acted upon in this rulemaking. Other portions of 18 AAC 50 have been submitted by the State for EPA approval under section 112(l) of the Act, and the TSD also identifies which section 112-related regulations are acted upon in this rulemaking. Portions of 18 AAC 50 have been submitted by the State as revisions to the Alaska state implementation plan (SIP) and will be approved or disapproved as part of the Alaska SIP in a separate rulemaking. Finally, portions of 18 AAC 50 have been submitted to EPA in support of a request for delegation under section 111(b) of the Act and will be acted upon later pursuant to that section.

b. Scope of proposed action. ADEC has requested approval to implement its title V program in all geographic regions of the State except within ''Indian Country,'' as defined in 18 U.S.C. section 1151. Therefore, EPA proposes that interim approval of the Alaska operating permits program not extend to sources located in Indian Country in Alaska. Because the extent of Indian Country is currently unknown and in litigation, the exact boundaries of Indian Country have not been established. At present, the lands acknowledged to be Indian Country are the Annette Island Reserve, and trust lands identified as Indian Country by the United States in Klawock, Kake, and Angoon. By proposing to grant interim approval to Alaska's title V operating permits program throughout the State except within Indian Country, EPA does not intend to affect the rights of Federally-recognized Indian tribes in Alaska, nor does it intend to limit existing rights of the State of Alaska. Title V sources located within Indian Country in Alaska will be subject to the Federal operating permits program, promulgated at 40 CFR part 71, *see* 61 FR 34202 (July 1, 1996), or subject to the operating permit program of any Tribe approved after issuance of regulations under section 301(d) of the Clean Air Act authorizing EPA to treat Tribes in the same manner as States for appropriate Clean Air Act provisions, *see* 59 FR 43956 (August 25, 1994) (proposed rules implementing section 301(d)).

c. Program implementation. There are several areas where the Alaska program does not directly address certain requirements of part 70, but EPA believes either that (1) the Alaska program, as a whole, satisfies the requirements of part 70 in that particular respect or (2) no changes are currently required to the Alaska program to comply with part 70, but changes will likely be required some time in the future.

i. Application submittal. Part 70 defines a ''timely application'' for sources applying for a title V permit for the first time as an application that is submitted within 12 months after the source becomes subject to the program or on or before such time as the permitting authority may establish. *See* 40 CFR 70.5(a)(1)(i). For sources required to meet the preconstruction requirements of section 112(g) of the Act or required to have a permit under the

preconstruction review program approved into the SIP under part C or part D of the Act, a ''timely application'' is one that is submitted within 12 months after the source commences operation or such earlier date set by the permitting authority. 40 CFR 70.5(a)(1)(ii).

The Alaska program requires a source to submit an application within 12 months of becoming subject to the title V program or 60 days before beginning construction of a source if the facility containing the source is a new source that is not required to obtain a construction permit under AS 46.14.130(a). *See* AS 46.14.150(a). However, the Alaska program does not specifically address new sources under section 112(g) or parts C or D of the Act. EPA understands that the Alaska program would consider such sources as ''becoming subject to the title V program'' at the time the source commences operation, thereby making the Alaska program consistent with 40 CFR 70.5(a)(1)(ii).

ii. Applicable requirements. The Alaska program does not use the term ''applicable requirements'' and therefore does not contain a concise definition of the Federally-enforceable requirements which must be contained in a title V permit. Rather, the Alaska program simply indicates that a title V permit must contain each ''air quality control requirement,'' which is defined in 18 AAC 50.990 as an obligation created by AS 46.14, 18 AAC 50 or a term or condition of a preconstruction permit issued by ADEC. In an attempt to ensure that all EPA-promulgated requirements are covered, ADEC has adopted by reference into 18 AAC 50.040 Federal regulations that currently apply to sources in Alaska. ADEC has not adopted those existing EPA-promulgated requirements for which there are currently no subject sources in Alaska. However, as described in section B.1.iii. below, ADEC failed to adopt several NESHAP that currently apply to Title V sources in Alaska. If at some future time, sources in Alaska become subject to these existing Federal regulations, ADEC will need to expeditiously update its incorporation by reference in order to adequately implement its title V program. In addition, as new EPA regulations are promulgated which apply to sources in Alaska, ADEC is expected to expeditiously incorporate these new regulations into 18 AAC 50.040.[1]

iii. Applicable requirements in EPA-issued PSD permits. Part 70 requires all ''applicable requirements,'' as defined in 40 CFR 70.2, to be included in title V permit applications and permits. As stated above, the Alaska program does not use the term ''applicable requirements'', but instead requires that a title V permit contain each ''air quality control requirement,'' which is defined in 18 AAC 50.990 as an obligation created by AS 46.14, 18 AAC 50 or a term or condition of a preconstruction permit issued by ADEC. However, Part 70 defines ''applicable requirement'' as including the terms and conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I of the Act, including parts C or D of the Act. *See* 40 CFR 70.2. Prior to July 5, 1983, EPA issued permits to construct to new and modified major stationary sources in Alaska under the PSD permitting regulations. *See* 40 CFR 52.96 as it existed prior to July 5, 1983. These permits are still in effect and contain Federally-enforceable requirements for sources subject to those permits. Since Alaska's regulations incorporate by reference 40 CFR 52.96 as it applies to title V sources, and EPA permits issued pursuant to 40 CFR 52.96 are considered to be Federally-enforceable parts of the Alaska SIP, such permits are considered to be ''air quality control requirements'' under the Alaska rules.

iv. Inclusion of fugitive emissions. EPA's regulations require that fugitive emissions be included in the permit and permit application in the same manner as stationary source emissions whether or not the source category in question is included in the list of sources for which fugitives must be included in determining a source's potential to emit. *See* 40 CFR 70.3(d). Alaska's regulations do not include a similar requirement, but rather, only contain the provisions regarding the inclusion of fugitives when determining a source's potential to emit. However, the Alaska rules do not include any provision which would explicitly allow a permit to exclude fugitive emissions once a source has been determined to require a permit. Accordingly, EPA believes that the Alaska program complies with the requirements of EPA's regulations. EPA is, therefore, proposing to approve this portion of the Alaska program based on an understanding that Alaska will implement its program consistently with the requirements of 40 CFR 70.3(d).

v. Changes provided for in the permit. Part 70 requires a permit to contain a provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit. *See* 40 CFR 70.6(a)(8). Similarly, part 70 requires that, if an applicable implementation plan allows a determination of an alternative emission limit, equivalent to that contained in the plan, to be made in the permit issuance, renewal or significant modification process and the State elects to use such process, any permit containing such an equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures. *See* 40 CFR 70.6(a)(1)(iii). The Alaska program does not contain corresponding requirements for permit content because there are currently no such programs in the Alaska SIP. EPA is proposing to approve this portion of the Alaska program based on an understanding that, should any such program be added to the Alaska SIP in the future, the provisions required by 40 CFR 70.6(a)(8) and 40 CFR 70.6(a)(1)(iii), as applicable, will be added to Alaska's title V rules at the same time.

vi. Administrative amendments. Part 70 authorizes States to allow certain ministerial types of changes to title V permits to be made by administrative amendment, which does not require EPA or public review or participation. *See* 40 CFR 70.7(d). That section contains a list of five types of changes which may be made by administrative amendment, and authorizes EPA to approve as appropriate for incorporation by administrative amendment other types of changes which are similar to those specifically enumerated in 40 CFR 70.7(d)(1). *See* 40 CFR 70.7(d)(1)(vi). The Alaska program authorizes three types of changes to be made by administrative amendment in addition to the five listed in part 70. *See* 18 AAC 50.370(a)(4), (5) and (6). As discussed below in section II.B.1., EPA believes that one of the three additional changes is not approvable and must be revised as a condition of full approval. EPA proposes to approve the two other types of changes, however, as appropriate for administrative amendment with the following understandings.

The Alaska program allows a change in assessable emissions to be made by administrative amendment, provided the change does not allow emissions to exceed emissions allowable under the permit. *See* 18 AAC 50.370(a)(4). ''Assessable emissions'' is defined as the lesser of the annual rate of emissions of

[1] As discussed in Sections II.B.1 below, additional issues with Alaska's treatment of ''applicable requirements'' are listed as proposed interim approval issues.

each air contaminant authorized by the facility's title V permit or the projected annual rate of emissions of each air contaminant based on previous actual annual emissions if the facility can make a certain showing to ADEC. *See* AS 46.14.240(h)(1). EPA interprets Alaska's administrative amendment procedures as allowing a change of assessable emissions only if the facility's assessable emissions are based on the facility's projected annual rate of emissions, and the change does not increase assessable emissions above the emissions allowable under the permit.

Finally, Alaska's program allows a source to convert an approval to operate under a general permit to a facility-specific permit with identical terms and conditions and the same expiration date. *See* 18 AAC 50.370(a)(6). According to Alaska's submittal, the purpose of allowing conversion from a general permit to a facility-specific permit is so that the permit can then be modified, by means other than administrative amendment, without affecting other facilities operating under the general operating permit. By the express terms of 18 AAC 50.370(a)(6), such a change is a change in the type of permit and not in the permit terms themselves. EPA therefore believes that this type of change is sufficiently similar to the other truly ''administrative'' types of changes specified in part 70 as appropriate for administrative amendment.

vii. Affected State review. Part 70 requires permit programs to contain provisions for notifying ''affected States'' of title V permitting actions. *See, e.g.,* 40 CFR 70.8. ''Affected State'' is defined as a State (1) whose air quality may be affected and that is contiguous to the State in which the permit activity is occurring or (2) that is within 50 miles of the permitted source. 40 CFR 70.2. There are no ''affected States'' vis-a-vis Alaska and the Alaska title V program therefore does not contain provisions requiring the notification of affected States.

viii. Option to obtain permit. Part 70 requires States to allow any source exempt under 40 CFR 70.3(b) to opt to obtain a part 70 permit. *See* 40 CFR 70.3(b)(3). The Alaska regulations do not contain a comparable provision. Unlike most other State operating permit programs, however, Alaska has not deferred permitting minor sources subject to section 111 and 112 standards, as authorized by 40 CFR 70.3(b). Instead, Alaska has exempted from title V permitting requirements only those minor sources which would be required to obtain an operating permit solely because they are subject to 40 CFR part 60, subpart AAA (NSPS for new residential wood heaters), 40 CFR 61.145 (asbestos NESHAP for demolition and renovation), or 40 CFR 63.340(e)(1) (chromium NESHAP for hard and decorative chromium electroplating and chromium anodizing tanks). Given the very limited exemption from title V permitting requirements in Alaska, EPA believes it is highly improbable that any exempt sources in Alaska would apply for a title V operating permit. Accordingly, EPA believes that Alaska satisfies the requirements of 40 CFR 70.3(b)(3).

3. Permit Fee Demonstration

Section 502(b)(3) of the Clean Air Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emission per year (adjusted from 1989 by the Consumer Price Index). *See* 40 CFR 70.4(b)(7); 40 CFR 70.9. The adjusted amount is currently $30.07. The $30.07 per ton is presumed, for purposes of program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum''.

The State of Alaska has adopted a fee structure that is a combination of emissions fees and user fees. User fees are currently set at $78 per billable hour. Emission fees are currently $5.07 per ton of assessable emissions. These fees will result in the collection of over $1,200,000 per year based on the State's current estimate of assessable emissions and the billable hours for permit actions. Based on a detailed demonstration of program costs, the amount of fees collected under the State's fee structure appears sufficient to cover the direct and indirect costs of administering the State's title V program. EPA therefore is approving the State's fee structure as meeting the requirements of section 502(b)(3) of the Act and 40 CFR 70.9. Title V fees are deposited in a ''clean air protection fund'' which must be appropriated by the Alaska Legislature. In order to retain approval of its title V program, the State must ensure that adequate funds are appropriated to cover all of the program costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for section 112 implementation. Except as discussed below in section B.1.iii. and the section proposing action on Alaska's section 112(l) submittal, Alaska has demonstrated adequate legal authority to implement and enforce section 112 requirements through the title V permit. Alaska has incorporated by reference most of the regulations that have been promulgated by EPA under section 112 of the Act that may affect Alaska sources. *See* 18 AAC 50.040(b) (relevant standards under 40 CFR part 61); 18 AAC 50.040(c) (relevant standards under 40 CFR part 63); AS 46.14.130(a) and 18 AAC 50.300 to 50.322 (preconstruction review of major sources of hazardous air pollutants (''HAPs''). All title V permit applications are required to cite and describe all sources regulated by a Federal emission standard adopted by reference in 18 AAC 50.040 and the standard that applies to the source (18 AAC 50.335(e) (2) and (6)) and all title V permits issued by the State are required to include terms and conditions that assure compliance with the applicable requirements of 18 AAC 50.040 (18 AAC 50.350(d)(1)(A) and (d)(3)).

b. Implementation of Title IV of the Act. Title IV does not apply in Alaska. *See* section 401(b) of the Act.

B. Options for Title V Program Approval and Implications

1. Proposed Interim Approval

EPA is proposing to grant interim approval to the Alaska program. If interim approval is promulgated, Alaska must address to EPA's satisfaction the following issues in order to receive full approval.

i. Applicability. The Alaska definition of ''regulated air contaminant'' in AS 46.14.990(21) is inconsistent with the EPA definition of the term ''regulated air pollutant'' in 40 CFR 70.2. Specifically, EPA's definition requires that any pollutant subject to section 112(j) of the Act be considered a regulated air pollutant on the date 18 months after the applicable date established pursuant to section 112(e) of the Act (i.e., the date that major sources are required to submit permit applications under section 112(j)(2)). The Alaska definition, however, requires a pollutant to be considered a regulated air contaminant only after a permit has been issued pursuant to section 112(j). Because there are currently no sources or pollutants subject to section 112(j) of the Act, EPA

does not consider this deficiency to be a disapproval issue. However, because sources and pollutants may become subject to section 112(j) in the future, the Alaska definition must be revised. As a condition of full approval, EPA proposes that Alaska demonstrate to EPA's satisfaction that its definition of ''regulated air contaminant'' is consistent with EPA's definition of ''regulated air pollutant'' in 40 CFR 70.2.

ii. Applicable requirements. Part 70 requires all ''applicable requirements'' to be included in a permit application and permit, and defines ''applicable requirement'' to include, among other things, the requirements of title VI of the Act (Stratospheric Ozone Protection). *See* 40 CFR 70.2. The Alaska definition of ''applicable requirement'' does not include all of the EPA regulations implementing title VI (40 CFR part 82) but only subparts B and F. Although EPA has proposed to revise 40 CFR part 70 to limit the definition of ''applicable requirement'' to only those provisions promulgated under sections 608 and 609 of the Act (which EPA has promulgated in 40 CFR part 82, subparts B and F), this proposed revision is not yet adopted. As such, EPA believes it must propose interim approval of the Alaska program at this time because it does not meet the requirements of part 70. Should EPA revise part 70 as proposed, Alaska's rules will be consistent and no revisions will be needed. However, if EPA does not revise part 70 as proposed, EPA proposes to require that Alaska adopt and submit appropriate revisions as a condition of interim approval.

iii. Authority to implement section 112 requirements. Alaska failed to adopt by reference into 18 AAC 50.040 certain NESHAP that apply to sources in Alaska, specifically 40 CFR 61.150 (asbestos NESHAP for waste disposal), 40 CFR 61.154 (asbestos NESHAP for active waste disposal sites) and 40 CFR Part 61 Subpart I (radionuclide NESHAP for facilities licensed by the Nuclear Regulatory Commission). As a result, sources subject to these NESHAP are not required to obtain title V permits, contrary to Alaska statutes which require operating permits for all sources subject to section 112 of the Act (unless exempted by EPA from the obligation to have a title V permit pursuant to section 502()) of the Act. Moreover, these NESHAP would not be considered to be ''applicable requirements'' under the Alaska program and therefore would not be required to be included in title V permits for subject sources.

EPA believes that these deficiencies are not so serious as to warrant disapproval of the Alaska program, but rather, the Alaska program can be granted interim approval on the following grounds. Regarding the issue of sources required to have title V permits, EPA has deferred from the obligation to have a permit sources which are not major sources but are subject to a standard under section 111 or section 112. The fact that the Alaska program has not generally deferred non-major sources from its program, but may have inadvertently deferred non-major sources subject to these three NESHAP, is a matter of State law is not an issue for EPA approval. Since the Alaska program does not exempt any more sources subject to these NESHAP than allowed under EPA's deferral, this aspect of the Alaska program is approvable.

On the issue of applicable requirements, Alaska has pointed out that other provisions of the Alaska rules, specifically 18 AAC 50.335(g) and 18 AAC 50.350(f)(4) allows ADEC to include in a permit any Federally-enforceable requirement that the source requests be included. If the source does not request the State to include an applicable Federal requirement, EPA would have to object to the permit and eventually issue a Federal permit which includes the requirement. While this does not sufficiently address the deficiency in the State's legal authority to require inclusion of all applicable requirements in a permit, it does provide an opportunity for the State to issue adequate permits for the period of interim approval. Furthermore, there appears to be only a small number of sources which will be impacted by this deficiency, so its impact on the program will be minimal. As such, EPA is requiring, as a condition of full approval, that Alaska update its incorporation by reference to include all of the NESHAP that currently apply to title V sources in Alaska.

iv. Insignificant emission units. Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emissions levels which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. 18 AAC 50.335(q) through (v) contain criteria for identifying insignificant sources and consist of a list of emission rates below which sources would be defined as insignificant, but must be listed in the permit application; a list of sources that are defined as ''categorically exempt'' and may be omitted from the permit application; a list of sources that are defined as ''insignificant'' based on size or production rate, but must be listed in the permit application; a list of sources that will be deemed ''insignificant'' on a case-by-case basis, but must be listed on the permit application; and a list of ''categorically exempt'' sources that could have significant emissions but are considered ''administratively insignificant'' for the purpose of operating permit applications because the sources are not regulated as stationary sources in Alaska. Sources that are subject to a Federally-enforceable requirement other than a requirement of the SIP that applies generally to all sources in Alaska (a so-called ''generally applicable requirement'' [2]) are not deemed ''insignificant'' under Alaska's program even if they otherwise qualify under one of the five lists. 18 AAC 50.335(q). Importantly, 18 AAC 50.335(m) includes a so-called ''gatekeeper,'' which expressly states that no permit application can omit information necessary to determine the applicability of, and include in a permit, all applicable requirements, including those for insignificant sources. In addition, 18 AAC 50.350(m)(2) states that the permit will contain all Federally-enforceable requirements that apply to insignificant sources.

EPA believes that, notwithstanding the gatekeeper and the requirement that a permit must contain all Federally-enforceable requirements that apply to insignificant sources, full approval of the Alaska provisions for insignificant sources is inappropriate for two reasons. First, 18 AAC 50.335(u) contains a list of sources that may be determined to be ''insignificant'' on a case-by-case basis. In order for EPA to approve such a ''director's discretion'' provision, Alaska must first demonstrate that each of the sources on that list (for example, pilot plants) would otherwise qualify as ''insignificant'' in all cases. EPA does not believe that 40 CFR 70.5(c) allows EPA to approve regulations that give a permitting authority complete discretion to determine on a case-by-case basis that a particular source is ''insignificant.'' *See* 60 FR 54990, 54995 (October 27, 1995) (proposed action on Idaho operating permits program). Alaska has advised EPA that upon further review of the sources listed in 18 AAC 50.335(u), it has determined that several of those sources do not qualify as ''insignificant'' and that Alaska plans

[2] ''Generally applicable requirements'' are those that apply universally to all sources, as opposed to requirements that focus on a category of sources.

on removing them from the list in a future revision of the rules. Therefore, as a condition of interim approval, EPA proposes to require that Alaska must demonstrate to EPA's satisfaction that each of the sources identified in 18 AAC 50.335(u) are insignificant or must delete those sources from the list.

EPA's second concern with Alaska's program for insignificant sources concerns the State's exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant sources that are subject only to generally applicable SIP requirements. *See* 18 AAC 50.350(m)(3). EPA believes that part 70 does not exempt such sources from the monitoring, recordkeeping, reporting and compliance certification requirements of 40 CFR 70.6, but instead provides only a limited exemption from permit application requirements for insignificant sources. *See* 61 FR 39335 (July 29, 1996) (final interim approval of Tennessee operating permits program based on exemption of insignificant emission units from certain permit content requirements); 61 FR 9661 (March 11, 1996) (proposed interim approval of Tennessee operating permits program on same basis); 60 FR 62992 (December 5, 1992) (final interim approval of Washington operating permits program based on exemption of insignificant emission units from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of Washington's operating permits program on same basis). On March 5, 1996, EPA issued a guidance document entitled ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program'' by Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors (''White Paper No. 2''), which specifically addresses the issue of how title V permits can address insignificant emission units and activities subject to generally applicable SIP requirements in a manner that minimizes the burden associated with the permitting of such emission units and activities. Briefly summarized, the guidance provides that it is within the permitting authority's discretion to decide that no additional monitoring (beyond that provided in the applicable requirement itself) will be required in the title V permit for insignificant emission units or activities subject to generally applicable requirements, if there is little or no likelihood that a violation could occur from those emission units or activities.[3] However, this is in part a factual finding, and White Paper No. 2 therefore contemplates that this discretion would be exercised on a permit-by-permit basis, where the finding can be reviewed in a context that is specific enough to be meaningful.[4]

White Paper No. 2, however, in no way suggests that emission units and activities subject to applicable requirements can be exempted from compliance certification, even on a permit-by-permit basis. To the contrary, White Paper No. 2 clearly states that compliance certification is required, but suggests a streamlined way in which compliance certifications may be made for these types of emission units and activities.

The Ninth Circuit Court of Appeals has recently decided a case addressing this same issue. *Western States Petroleum Association* v. *EPA*, No. 95–70034 (June 17, 1996) (''*WSPA*''). Because of the similarities between that case and this action, EPA believes it appropriate to address here how it plans to respond to that decision. EPA wishes to emphasize that the *WSPA* decision is very recent, and that EPA is still in the process of developing a more thorough response that addresses other title V programs. However, given the State's desire to avoid imposition of the Federal Part 71 operating permits program, EPA decided it is in the State's best interest not to delay approval until a more thorough response could be articulated.

The *WSPA* case concerned EPA's approval of the Washington State operating permits program, which contained an exemption from monitoring, recordkeeping, reporting, and compliance certification requirements for insignificant emission units and activities subject to generally applicable SIP requirements. *See* 60 FR 62996; 60 FR 50171. The Alaska insignificant sources provisions are modeled closely after the Washington provisions. Industry petitioners challenged EPA's identification of this exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70, and that EPA had acted inconsistently by approving other title V programs with similar exemptions. The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval.

As explained in the Federal Register notice granting final interim approval to the Tennessee operating permits program, 61 FR 39337–39340, EPA accepts the broader holding of the *WSPA* decision, namely, that EPA should act consistently in its program approvals or else explain any departures. However, EPA does not necessarily agree with the specific findings of the Court regarding inconsistent actions in other State programs. The *WSPA* court found that EPA had acted to approve title V programs with exemptions from permit content requirements in eight instances. An inconsistency would exist where EPA had approved a title V program that exempts insignificant emissions units and activities from permit content requirements even where those emission units or activities are subject to an applicable requirement.

EPA is still in the process of reviewing the insignificant emission units and activities provisions of the Ohio; North Carolina; Hawaii; and Jefferson County, Kentucky operating permit programs in order to determine whether EPA acted inconsistently in approving those programs. EPA has carefully reviewed the insignificant emission units and activities provisions of the Massachusetts; North Dakota; Knox County, Tennessee; and Florida operating permit programs, however, and has concluded that EPA did not act inconsistently in approving these programs.

A careful examination of the Massachusetts permitting rule demonstrates that Massachusetts' insignificant emission units and activities provisions represent a careful effort to list emission units and activities that are not relevant to permit content. The North Dakota and Knox County title V regulations do not in any way suggest that emission units subject to applicable requirements may be

[3] If no monitoring is required, it would follow that the permit can also dispense with recordkeeping and reporting for those units because there is no compliance data being regularly generated.

[4] EPA does not rule out that a State might structure an insignificant activities list narrowly enough that such a finding could be made programmatically, thereby allowing for a categorical exemption from part 70 monitoring, recordkeeping, and reporting. However, EPA does not find this to be the case for the current Alaska insignificant activities provisions because Alaska has not demonstrated to EPA that it has so narrowly defined the types of sources that can be deemed ''insignificant'' that there is little or no likelihood that a violation could occur from those sources.

EPA believes that more often than not it will be the case that part 70 monitoring, recordkeeping, and reporting requirements will not be necessary where the State's insignificant activities are subject only to generally applicable requirements. Therefore, Alaska may address this interim approval condition by modifying the exemption from these requirements to a regulatory presumption that the monitoring, recordkeeping, and reporting requirements will not apply in those instances, but leaving the State with the authority to prescribe those requirements as needed on a permit-by-permit basis.

exempted from permit content, although the language of the Federal Register notices approving these provisions could be read as suggesting such an exemption existed. The language of EPA's approval notices, imprecise though it may have been, cannot create an exemption where none exists in the State program rules. With respect to Florida, the program regulations do appear to exempt insignificant activities from title V permitting. The Court concluded that EPA had not identified this provision as grounds for interim approval. EPA does not necessarily agree. In EPA's view, in order to remedy the deficiencies identified by EPA in the Florida interim approval notice, which included the State's failure to include gatekeeper language that assured the completeness of permit applications, the State would necessarily have to address the exemption created from permit content requirements. It follows that, to the extent Florida's regulations can be read as creating an exemption from permit content, this should also be considered grounds for interim approval. For a more detailed explanation of EPA's conclusion that the Massachusetts, North Dakota, Knox County, Tennessee, and Florida operating permit programs are not inconsistent with EPA's proposed action on the Alaska operating permits program and EPA's interim approval of the Washington operating permits program regarding treatment of insignificant emission units and activities, please refer to the docket available at the addresses listed at the beginning of this Notice.

EPA also does not necessarily agree that the Washington interim approval constituted a departure from the precedent established generally in title V program approvals nationwide. The *WSPA* opinion states that:

> the EPA may not depart, sub silentio, from its usual rules of decision to reach a different, unexplained result in a single case * * * To the contrary, the EPA must clearly set forth the ground for its departure from *prior norms* so that we may understand the basis of the EPA's action and judge the consistency of that action with EPA's mandate. Slip Op., at 6990 (emphasis added).

EPA reads this to mean that a regulatory interpretation proffered by the Agency is not entitled to judicial deference if it conflicts with the de facto policy established through the Agency's actions on specific programs. That is, if the ''norms'' established through program approvals are other than the Agency's articulated policy, courts will not uphold the Agency's efforts to impose the latter.

The Court in *WSPA* appeared to base its specific holding of inconsistency on its assumption that EPA had approved eight programs with exemptions from permit content, but had acted to impose the policy against permit content exemptions in only two instances.[5] This assumption is incorrect. At the time the Washington State program received interim approval, EPA had approved 22 State and 39 local programs, and had proposed approval of another 13 State and 13 local programs. As of today, EPA has approved 45 State and 56 local programs, and has proposed approval of another 8 State and 4 local programs.[6] Each program submitted to EPA necessarily addresses this issue, although most do so simply by providing for permit content language consistent with part 70—that is, by not affirmatively establishing any permit content exemption. Of 113 title V programs approved or in the process of approval, EPA believes that there are at most four with regulations that present inconsistencies on this issue, which represents a relatively minor set of deviations from the normal policy manifested in the vast majority of title V program approvals. In short, EPA believes it is clear from these totals that its ''prior norm'' has been to grant full approval only where emission units and activities subject to applicable requirements are not exempted from the permit, and that its interpretation of part 70, as manifested both in its articulated policy and in actual program approvals, is consistent with the position EPA proposes here with respect to the Alaska program. In those few instances where confirmed inconsistencies exist, EPA plans to take appropriate action to follow the *WSPA* Court's mandate that it act consistently or explain any departures.

In summary, EPA proposes as a condition of full approval that Alaska must adequately address these two identified issues: (1) The designation and definition of insignificant sources on a case-by-case basis; and (2) the exemption of insignificant sources from monitoring, recordkeeping, reporting, and compliance certification requirements. EPA does not believe, however, that these problems with Alaska's program preclude interim approval. The ''gatekeeper'' provisions of 18 AAC 50.335(m), along with 18 AAC 50.350(m)(2), adequately assure that Alaska has the necessary authority to issue permits that assure compliance with all applicable requirements to subject sources during the interim approval period, as required by 40 CFR 70.4(d)(3)(ii) and 70.6(a)(1).

v. Emissions trading provided for in applicable requirements. Part 70 requires that the permitting authority must include terms and conditions, if the permit applicant requests them, for trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases without a case-by-case approval of each emissions trade. *See* 40 CFR 70.6(a)(10). The Alaska program does not contain a comparable provision. This appears to be based on the State's assumption that no applicable requirements currently provide for such trading. Certain of the EPA standards in 40 CFR part 63, however, do allow for such trading, and as such, EPA believes that the Alaska program must contain such a provision as a condition of full approval. Therefore, EPA proposes that Alaska ensure that its program include the necessary provisions to meet the requirements of 40 CFR 70.6(a)(10).

vi. Inspection and entry requirements. Part 70 requires each title V permit to contain a provision allowing the permitting authority or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform specified inspection and entry functions. *See* 40 CFR 70.6(c)(2). The Alaska program fails to meet the requirements of part 70 in an important respect. Alaska law conditions ADEC's inspection and entry authority on first obtaining the consent of the owner or operator or obtaining a warrant. *See* AS 46.03.860; 46.14.515(a); 18 AAC 50.345(7). The owner or operator is not required to consent to such inspections and entry as a condition of obtaining a title V permit. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its inspection and entry authority meets the requirements of 40 CFR 70.6(c)(2).

vii. Progress reports. Part 70 requires a title V permit to require the submission of progress reports, consistent with the applicable schedule of compliance and 40 CFR 70.5(c)(8), to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. *See* 40 CFR 70.6(c)(4). Alaska requires the submission of such reports semi-annually, but requires that they be submitted more frequently only if required by the permitting authority.

[5] ''[T]he EPA has identified only two Title V programs that in fact apply permitting requirements to IEU's . . ..'' Slip Op., at 6988.

[6] Altogether, 116 State and local agencies will have title V programs.

See 18 AAC 50.350(k)(3). There is therefore no assurance that more frequent progress reports will be required in the permit if specified in the applicable requirement. As a condition of full approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(4).

viii. Compliance certification. Part 70 requires a permitting program to contain requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards or work practices. *See* 40 CFR 70.6(c)(5). The Alaska program requires a title V permit to contain compliance certification requirements only with permit terms and conditions established under 18 AAC 50.345 (standard conditions) and 18 AAC 50.350(d) (source specific permit requirements), (e) (facility-wide permit requirements) and (f) (certain other requirements). It therefore does not require certification of compliance with all permit terms and conditions, such as monitoring, recordkeeping, reporting and compliance plan requirements. *See* 18 AAC 50.350(g), (h), (i) and (j). There may also be other terms and conditions of a permit that are required by a statute or regulation other than those specifically enumerated in 18 AAC 50.350(j). As a condition of full approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its program complies with the requirements of 40 CFR 70.6(c)(5).

ix. General permits. Part 70 allows States to issue ''general permits,'' which are permits issued after notice and opportunity for public participation that cover numerous similar sources. *See* 40 CFR 70.6(d). The Alaska program authorizes the issuance of general permits. *See* AS 46.14.210; 18 AAC 50.380. The Alaska provisions for general permits, however, fail to comply with the requirements of part 70 in one respect. Part 70 allows permitting authorities to provide for applications for general permits which deviate from the requirements of 40 CFR 70.5, provided that such applications otherwise meet the requirements of title V. 40 CFR 70.6(d)(2). The Alaska regulations indicate that ADEC will issue specialized permit applications for general permits, *see* 18 AAC 50.380(c) (source shall submit a completed application form issued by ADEC for the specific facility type), but do not require that such general permit applications meet the requirements of title V. Accordingly, EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that applications for general permits meet the requirements of title V.

x. Affirmative defense for emergencies. Part 70 provides an affirmative defense to an action brought for noncompliance with a technology-based limitation in a title V permit if certain specified conditions are met. *See* 40 CFR 70.6(g). In the August 1995 proposed revisions to part 70, EPA has clarified that, ''By technology-based standards, EPA means those standards the stringency of which are based on determinations of what is technologically feasible, considering relevant factors. The fact that technology-based standards contribute to the attainment of the health-based NAAQS or help protect public health from hazardous air pollutants does not change their character as technology-based standards.'' See 59 FR 45530, 45559 (August 31, 1995).

Alaska's program provides an affirmative defense for unavoidable emergencies, malfunctions and nonroutine repairs that closely parallels 40 CFR 70.6(g), but is slightly broader than that section in a few respects. *See* AS 46.14.560; 18 AAC 50.235; 18 AAC 50.990. First, the Alaska regulations include a definition of ''technology-based standard'' which closely corresponds to the definition in the proposed part 70 revisions, but requires that the stringency of the standard be based ''primarily'' on determinations of what is technologically feasible. 18 AAC 50.990(82). EPA is concerned that, with the addition of the word ''primarily,'' this provision could be used to incorrectly classify a health-based standard, such as an opacity limit or grain loading standard, as a technology-based standard. Second, although the Alaska program requires a permittee claiming the affirmative defense to notify ADEC within two working days of the exceedance, Alaska gives a permittee up to one week after the discovery of the exceedance to provide ADEC with a written notice describing the cause of, and its response to, the exceedance. 18 AAC 50.235. Part 70 requires that written notice of the exceedance containing this information be provided within two working days of the exceedance. *See* 40 CFR 70.6(g)(3)(iv). As a condition of full approval, EPA proposes to require that Alaska demonstrate to EPA's satisfaction that its emergency provisions are consistent with the requirements of 40 CFR 70.6(g).

xi. Off-permit provisions. Part 70 authorizes an approved permit program to include certain ''off-permit'' provisions whereby a source can make a change at the permitted facility without the need for a permit revision. *See* 40 CFR 70.4(b) (14) and (15). These provisions require the permittee to keep a record at the facility describing each off-permit change and to provide ''contemporaneous'' notice of each off-permit change to EPA and the permitting authority. *See* 40 CFR 70.4(b)(14). The Alaska program, however, limits the requirement to provide notice and keep records to only those sources required to provide certain information under 18 AAC 50.335. Although EPA has proposed to revise 40 CFR part 70 to eliminate the off-permit requirements, this proposed revision is not yet adopted. As such, EPA believes it must propose interim approval of the Alaska program at this time because it does not meet the requirements of part 70. Should EPA revise part 70 as proposed, Alaska's rules will be consistent with part 70 in this respect and no revisions will be needed. However, if EPA does not revise part 70 as proposed, EPA proposes to require that Alaska ensure that its program requires notice and records for all off-permit changes.

xii. Statement of basis. Part 70 requires that the permitting authority shall provide and send to EPA, and to any other person who requests it, a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). *See* 40 CFR 70.7(a)(5). The Alaska title V program does not contain a comparable requirement. As a condition of full approval, Alaska must demonstrate to EPA's satisfaction that its program satisfies the requirements of 40 CFR 70.7(a)(5).

xiii. Administrative amendments. As discussed above, part 70 authorizes States to allow certain ministerial types of changes to title V permits to be made by administrative amendment, which does not require EPA or public review or participation. *See* 40 CFR 70.7(d). That section contains a list of five types of changes which may be made by administrative amendment, and authorizes EPA to approve as appropriate for incorporation by administrative amendment other types of changes which are similar to those specifically enumerated in 40 CFR 70.7(d)(1). *See* 40 CFR 70.7(d)(1)(vi). As also discussed above, EPA believes that one of the three additional changes in the Alaska regulations is not approvable and must be revised as a condition of full approval.

Alaska's program allows alterations in the identification of equipment or components that have been replaced

with equivalent equipment or components to be made by administrative amendment provided certain conditions are met. *See* 18 AAC 50.370(a)(5). EPA believes that the restrictions on such permit alterations for equivalent replacement equipment or components are sufficient to ensure that any resulting change would be truly ministerial, with the following exception. 18 AAC 50.370(a)(5)(D) prohibits such a change to be made by administrative amendment if the revision would result in a modification under 40 CFR part 60, which is adopted by reference in 18 AAC 50.040. This restriction is too narrow, in that it would allow alterations in equivalent replacement equipment or components even if the change resulted in a modification or reconstruction under 40 CFR part 61 or 63. Such changes are title I modifications and as such must be made by significant permit modification procedures. *See* 18 AAC 50.990(82); 18 AAC 50.375. Accordingly, EPA proposes to require, as a condition of full approval, that Alaska revise 18 AAC 50.370(a)(5)(D) to expand the prohibition to include modifications and reconstructions made pursuant to 40 CFR parts 60, 61 and 63, or to eliminate 18 AAC 50.370(a)(5) from the list of changes that may be made by administrative amendment.

xvi. Minor permit modifications. Part 70 requires States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e). The part 70 regulations contain criteria that a revision must meet in order to be processed as a minor permit modification and then contains procedures for those changes qualifying as minor permit modifications. *See* 40 CFR 70.7(e)(2)(i)(A). The Alaska program takes the same basic approach to permit modifications as part 70, but contains several differences which EPA believes require interim approval. *See* 18 AAC 50.375.

First, part 70 prohibits a permit revision to be made as a minor permit modification if the revision involves ''significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit.'' 40 CFR 70.7(e)(2)(i)(A)(2). Part 70's significant modification procedures further restrict the class of revisions that may be processed as a minor permit modification, stating that ''every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms shall be considered significant.'' *See* 40 CFR 70.7(e)(4). Like part 70, the Alaska program prohibits changes to be made by minor permit modification if the change would ''materially alter or reduce the frequency, accuracy, or precision of existing monitoring, recordkeeping, or reporting requirements in the permit.'' 18 AAC 50.375(a)(6). In contrast to part 70, however, neither Alaska's minor nor significant modification procedures ensure that a relaxation of reporting or recordkeeping permit terms must be processed as a significant modification. Instead, the Alaska program simply states that any revision that cannot be processed as an administrative amendment or minor permit modification shall be processed as a significant modification. 18 AAC 50.370(h). The Alaska program would, therefore, allow a relaxation of reporting or recordkeeping requirements to be processed as a minor modification, as long as the revision did not ''materially alter or reduce'' the frequency, accuracy, or precision of existing reporting or recordkeeping requirements.

Second, the Alaska program also appears deficient with respect to the information required in applications for minor permit modifications. Part 70 requires that an application for a minor permit modification must include a description of the change, the emissions resulting from the change and any new applicable requirements that will apply if the change occurs. 40 CFR 70.7(e)(2)(ii)(A). The Alaska program requires that an application for a minor permit modification contain a description of changes at the facility that would result from the proposed revision and, for any resulting changes at the facility, the information required by 18 AAC 50.335, which sets forth the requirements for permit applications for title V permits. That section, however, does not appear to require a facility applying for a minor permit modification to provide information on the emissions resulting from the modification.

Finally, the Alaska program fails to include provisions which allow minor permit modification procedures to be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. *See* 70.7(e)(2)(B). Again, this appears to be based on an incorrect assumption by the State that no applicable requirements currently provide for the use of such minor permit modification procedures. However, as stated above, certain of the EPA standards in 40 CFR part 63 do allow for the use of minor modification procedures, and as such, this provision is required as a condition of full approval. Therefore, as a condition of full approval, EPA proposes to require Alaska to ensure that its program include the necessary provisions to meet the requirements of 40 CFR 70.7(e)(2)(B).

xv. Group processing of minor permit modifications. Part 70 allows a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source. *See* 40 CFR 70.7(e)(3). Section 70.7(e)(3)(i) establishes standard thresholds for determining whether requests for permit modifications can be grouped, but allows EPA to approve alternative thresholds, if the permitting authority can justify the alternative thresholds based on two specified criteria. The Alaska program contains provisions allowing group processing of minor permit modifications. *See* 18 AAC 50.375(d). The Alaska program, however, does not contain any thresholds, either the standard thresholds set forth in 40 CFR 70.7(e)(3)(i) or proposed thresholds tailored to Alaska sources, for determining whether minor permit modifications may be processed as a group.

The failure of the Alaska program to establish thresholds for group processing leads to two additional deficiencies in the Alaska program. First, the Alaska program allows for group processing of minor permit modifications on a quarterly basis. Section 70.7(e)(3)(iii) requires that the permitting authority notify EPA of requested permit modifications to be processed as a group on a quarterly basis, or within 5 working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the approved threshold levels, *whichever is earlier.* Second, Alaska's regulations do not require a source to include in an application for group processing, a determination of whether a requested modification, when aggregated with the other pending applications to be processed as a group, equals or exceeds the approved threshold levels, as required by 40 CFR 70.7(e)(3)(ii)(D).[7] As

[7] Because the Alaska group processing provision relies on the State's general minor permit modification procedures, Alaska's group processing provision is also deficient for the reasons set forth above in the discussion of the problems with Alaska's minor permit modification procedures.

Continued

a condition of full approval, EPA proposes that Alaska be required to demonstrate that its group processing procedures are consistent with the requirements of 40 CFR 70.7(e)(3).

xvi. Significant permit modifications. Part 70 requires a State to provide for a review process that will assure completion of review of the majority of significant permit modifications within 9 months after receipt of a complete application. 40 CFR 70.7(e)(4)(ii). The Alaska submittal does not address this requirement in its regulations or otherwise in its program submittal. EPA proposes to require, as a condition of full approval, that Alaska provide assurances that its program is designed and will be implemented so as to complete review on the majority of significant permit modifications within this timeframe.

xvii. Reopenings. Part 70 establishes minimum requirements a State must meet where the State or EPA determines that cause exists to terminate, modify or revoke and reissue a permit. *See* 40 CFR 70.7 (f) and (g). The Alaska program contains reopening provisions, but the provisions fail to comply with part 70 in several respects. Part 70 requires that a permit be reopened if additional requirements become applicable to a major part 70 source with a remaining term of 3 or more years. Reopening is not required if the effective date of the requirement is later than the date the permit is due to expire, except this exception to the reopening requirement shall not apply if the permit or its terms have been administratively extended. *See* 40 CFR 70.7(f)(1)(i). The Alaska program satisfies the requirements for reopening a permit in the event of new applicable requirements, except that there is nothing in the Alaska program that would require reopening in the event that the effective date of a new applicable requirement is later than the permit expiration date and the permit has been administratively extended. *See* AS 46.14.280(a)(3)(B).

Part 70 also requires that a permit *shall* be reopened or revised if the State or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit. *See* 40 CFR 70.7(f)(2)(iii). The Alaska program states that ADEC *may* reopen a permit if, among other things, the permit was obtained by misrepresentation of a material fact, the permit was obtained by failure of the facility to disclose fully the facts relating to issuance of the permit, the permit contains a material mistake or there has been a material change in the quantity or type of emissions. *See* AS 46.14.280(1)(A), (2)(A) and (2)(B). This provision of Alaska's program does not appear to comply with part 70 in that the Alaska program merely authorizes ADEC to reopen a permit under the stated circumstances, where as part 70 requires that a permit be reopened if ADEC or EPA makes such a finding.

The Alaska program also fails to contain required procedures in the event of a reopening for cause by EPA. Part 70 requires that, within 90 days of receiving notice from EPA that cause exists to terminate, modify or revoke and reissue a permit, the permitting authority shall forward to EPA a proposed determination of termination, modification, or revocation and reissuance. 40 CFR 70.7(g)(2). If EPA then objects to the permitting authority's proposed determination, the permitting authority has 90 days to resolve the objection by terminating, modifying, or revoking and reissuing the permit in accordance with EPA's objection. 40 CFR 70.7(g)(4). The Alaska program does not appear to contain any comparable provisions.

Finally, part 70 requires that a State title V program assure that reopenings are made as expeditiously as practicable. 40 CFR 70.7(f)(2). The Alaska program does not appear to contain a comparable provision either in its regulations or otherwise in its program submittal. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that its provisions for reopenings comply with the requirements of 40 CFR 70.7(f) and (g).

xviii. Public petitions to EPA. Part 70 allows any person, within 60 days after expiration of EPA's 45-day review period, to petition EPA to object to a permit based on grounds raised during the public comment period. *See* 40 CFR 70.6(d). If, as a result of such a petition, EPA objects to the permit and the permit has not already been issued, the permitting authority may not issue the permit until EPA's objection has been resolved. If the permit has been issued at the time of an EPA objection resulting from a public petition, the petition for review does not stay the effectiveness of the permit and, after any action by EPA to modify, terminate, or revoke the permit, the permitting authority may thereafter issue only a revised permit that satisfies EPA's objection. Alaska's program does not appear to address these requirements. The prohibition on issuance of a permit if the EPA objects appears to apply only if EPA objects during its 45-day review period. AS 46.14.220(a). In the case of an EPA objection in response to a petition, EPA's objection would occur after the 45-day review period. EPA proposes to require, as a condition of full approval, that Alaska demonstrate to EPA's satisfaction that Alaska's provisions regarding public petitions to EPA, comply with the requirements of 40 CFR 70.8(d).

xix. Public participation. Part 70 requires that the permitting authority make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Clean Air Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act, and expressly provides that the contents of a title V permit are not entitled to confidential treatment. *See* 40 CFR 70.4(b)(3)(viii). Alaska's statutes and regulations regarding public access to information appear to be comparable to the requirements of part 70 with one exception. *See* AS 09.25.110 to .220; 46.14.520; 45.50.910 to .945. There is no express assurance under Alaska law that the terms and contents of a title V permit will not be entitled to confidential treatment. EPA believes that it is very unlikely that anything in a title V permit would qualify for confidential treatment under Alaska law in light of the narrow scope of information entitled to confidential treatment in Alaska and the provisions specifying the content of a title V permit. EPA therefore believes that the failure of the Alaska program to expressly state that nothing in a title V permit shall be entitled to confidential treatment does not pose a bar to interim approval. *See* 40 CFR 70.4(d)(3)(iv); *see also* 60 FR 54990, 54999 (October 27, 1995)(proposed interim approval of Idaho title V program). In order to obtain full approval, however, Alaska must demonstrate to EPA's satisfaction that nothing in a title V permit will be entitled to confidential treatment.

2. Effect of proposed action

Final interim approval may be granted for up to two years following the effective date of final interim approval, and cannot be renewed. During the interim approval period, Alaska would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Alaska. Permits issued under a program with interim approval have full standing with respect to part 70. In addition, the one-year time period for submittal of permit applications by subject sources and the

These issues must also be addressed for group processing as a condition of full approval.

three-year time period for processing the initial permit applications begin upon the effective date of interim approval.

If, following the grant of interim approval, Alaska were to fail to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If Alaska then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the section 179(b) sanctions, which would remain in effect until EPA determined that Alaska had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, Alaska still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Alaska's complete corrective program, the consequences would be the same as if EPA had initially disapproved, rather than granted interim approval to, Alaska's submittal.

3. Scope of Proposed Interim Approval

If EPA grants final interim approval to the Alaska title V program, EPA proposes that the program would apply to all title V sources (as defined in the approved program) within all geographic regions of the State of Alaska, except within ''Indian Country'' as defined in 18 U.S.C. section 1151.

III. Proposed Action on Section 112(l) Submittal and Implications

A. Authority for Section 112 Implementation

In its title V program submittal, Alaska has demonstrated adequate legal authority to implement and enforce all section 112 (hazardous air pollutants) requirements through its title V operating permit process. All Alaska title V permit applications are required to cite and describe each source regulated by a Federal emission standard adopted by reference in 18 AAC 50.040 and the standard that applies to the source (18 AAC 50.335(e)(2) and (6)). In addition, all title V permits issued by the State are required to include terms and conditions that assure compliance with the applicable requirements of 18 AAC 50.040 (18 AAC 50.350(d)(1)(A) and (d)(3)).

Alaska has incorporated by reference and is requesting delegation for all source-applicable sections of the following Federal regulations promulgated by EPA under section 112 of the Act: 40 CFR part 61, subparts A (except § 61.16[8]), E, J, V, Y, FF, § 61.145 of subpart M (along with other sections and appendices which are referenced in 61.145) as this rule applies to sources required to obtain an operating permit under AS 46.14.130(b)(1)–(3) and 18 AAC 50.330[9], and appendices A, B, and C; and 40 CFR part 63, subparts A (except 63.12 through 63.15[10]), B (except 63.50[11] and 63.54[12]), D, and M. *See* 18 AAC 50.040(b) (relevant standards under 40 CFR part 61); 18 AAC 50.040(c) (relevant standards under 40 CFR part 63); AS 46.14.130(a) and 18 AAC 50.300 through 50.322 (preconstruction review of major sources of HAPs). Alaska is also requesting authority to implement and enforce all future 40 CFR parts 61 and 63 regulations which Alaska adopts by reference into State law. Finally, Alaska requests approval under the authority of 40 CFR 63.93 to substitute its state preconstruction review program for the Federal preconstruction review requirements in 40 CFR 63.5(b)(2)–(4) and 63.54, as these rules apply to newly constructed major affected sources[13] or the construction of a new emission unit[14].

B. Program for Delegation of Section 112 Standards as Promulgated

The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Because the State program has met these basic requirements for the purpose of approval of its title V program, it has also met these requirements for the purpose of receiving delegation of the section 112 standards that Alaska has adopted by reference.

However, in regard to the delegation of 40 CFR 61.145, EPA is concerned that Alaska does not currently have inspection personnel trained to perform asbestos inspections. EPA believes that proper training is necessary if Alaska is to properly enforce and assure compliance with 40 CFR 61.145. In this regard EPA has requested Alaska to provide for adequate training of its staff who will be performing asbestos inspections. Although EPA is proposing to approve delegation of this portion of the asbestos program to Alaska, EPA plans to continually monitor Alaska's asbestos program to ensure that the staff are properly trained and that the program is being properly implemented and enforced.

C. Substitution of State Preconstruction Review Regulations

As stated above, Alaska seeks to replace the Federal preconstruction review regulations of 40 CFR 63.5(b)(3) and 63.54 with comparable State-adopted regulations. Alaska adopted 40 CFR 63.5(b)(3), (d) and (e)[15] into 18 AAC 50.040 but did not adopt 40 CFR 63.54. EPA has determined that the State preconstruction review requirements of AS 46.14.130 and 18 AAC 50.300 through 50.322, are less stringent than 40 CFR 63.5(b)(3) and 40 CFR 63.54 as these rules apply to newly constructed major sources of HAPs. Alaska's program requires newly constructed, installed, or modified facilities that emit or have the potential

[8] 40 CFR 61.16 references the Federal public information requirements set out in 40 CFR Part 2 which apply solely to EPA and do not place any information disclosure requirements on a State or local agency. Alaska has adopted similar requirements under AS 46.14.520 and 46.14.525 which apply to the public availability of information provided to the State by affected facilities.

[9] 18 AAC 50.330 exempts from the requirement under AS 46.14.130(b)(3) to obtain an operating permit those facilities which would only be subject to such requirement because they contain sources regulated by the asbestos demolition and renovation provisions of 40 CFR 61.145 and those sources exempted from part 70 permitting under the chromium electroplating and anodizing provisions of 40 CFR 63.340(e)(1).

[10] 40 CFR 63.12 through 63.15 refer to EPA administrative activities which do not apply to Alaska and therefore are not necessary for delegation purposes.

[11] 63.50 ''Applicability'' defines when a source becomes subject to the provisions of 63.51 through 63.56. Although Alaska did not adopt 63.50 into State law, they have adopted the relevant applicability language of 63.50(a) into 18 AAC 50.040(c)(2)(B), which EPA believes is sufficient for purposes of implementing the requirements of subpart B.

[12] Section 63.54 defines optional notice and approval requirements for newly constructed and reconstructed sources which EPA is not requiring the State to adopt for delegation purposes.

[13] See definitions of ''Major source'' and ''Affected source'' in 40 CFR 63.2.

[14] As defined in 40 CFR 63.51.

[15] Alaska adopted these rules only as these rules apply to reconstructed hazardous air contaminant major facilities through a permit condition in 18 AAC 50.345(b).

to emit hazardous air contaminants [16] equal to or greater than major source thresholds to obtain a construction permit. *See* AS 46.14.130(a)(4). In this respect, Alaska's program is as stringent as 40 CFR 63.5(b)(3) and 63.54. The Alaska program also provides for similar application, review, and approval procedures as provided for in 40 CFR 63.5(d), (e), and 63.54. *See* 18 AAC 50.300 through 50.322. But, unlike 40 CFR 63.5(b)(3), Alaska preconstruction review procedures allow newly constructed sources at an existing facility to ''net out'' of preconstruction review. *See* Section IV.G.1 of the Alaska SIP, Alaska Point Source Control Program. In other words, if a facility can offset emission increases from the new source, thereby showing that no net increase in emissions will occur, the facility is relieved from obtaining pre-approval from Alaska to construct this new emission source.

Additionally, 40 CFR 63.5(b)(3) requires all new major affected sources (i.e., new major sources which have the potential to emit HAPs in quantities above major source thresholds, and ''affected sources'' which are considered ''major sources'' for the purpose of establishing maximum achievable control technology standards under the authority of section 112 of the Clean Air Act but do not have the potential to emit HAPs above major source thresholds) to obtain approval prior to construction, whereas Alaska's preconstruction program regulations only applies to new major HAPs sources (i.e., those sources that have the potential to emit HAPs above major source thresholds). For example, a facility which builds a new hard chromium electroplating operation that has a potential rectifier capacity greater than 60 million ampere-hours per year would be subject to preconstruction review and approval under 40 CFR 63.5(b)(3) but would not be required to undergo preconstruction review under Alaska's program since it would not have the potential to emit chromium in quantities greater than 10 tons per year. Given this, EPA has determined that Alaska's preconstruction review program is less stringent than 40 CFR 63.5(b)(3) and EPA is therefore cannot be approved.

D. Options for Section 112(l) Approval and Implications

In conjunction with the actions being taken in regard to Alaska's title V program submittal, EPA proposes to approve Alaska's delegation request made on May 17, 1995, and supplemented on February 27, and July 5, 1996, for all existing applicable 40 CFR parts 61 and 63 regulations adopted by reference in 18 AAC 50.040, with the exception of 40 CFR 63.6(g) which the state has adopted by reference in 50.040(c)(1)(D). EPA is disapproving Alaska's request for delegation of authority for approving alternative non-opacity emission standards under 40 CFR 63.6(g) because such authority is reserved for the EPA Administrator and cannot be delegated to a State or local agency. Because the State's request for approval of authority to implement and enforce 40 CFR parts 61 and 63 does not include implementation and enforcement for part 70 exempted sources, EPA will retain the responsibility for implementing and enforcing 40 CFR part 61, subpart M, for area source asbestos demolition and renovation activities, and 40 CFR part 63, subpart N, for area source chromium electroplating and anodizers operations which have been exempted from part 70 permitting in 40 CFR 63.340(e)(1). *See* 61 FR 27785, 27787 (June 3, 1996). EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Alaska's mechanism for receiving delegation of future 40 CFR part 63 regulations as adopted unchanged into State law.[17] EPA is proposing to disapprove Alaska's request to implement and enforce its State-adopted preconstruction review regulations in 18 AAC 50.300 through 50.322 in place of 40 CFR 63.5(b)(3). In this respect, EPA retains the authority to administer the Federal preconstruction review program under 40 CFR 63.5(b)(3) as this rule applies to the construction of a new major affected source; therefore, owners and operators subject to 40 CFR 63.5(b)(3) must still obtain EPA approval prior to commencing construction.

Although EPA is delegating authority to Alaska to enforce the NESHAP regulations as they apply to affected sources, it is important to note that EPA retains oversight authority for all sources subject to these Federal requirements. EPA has the authority and responsibility to enforce the Federal regulations in those situations where the State is unable to do so or fails to do so.

E. Scope of Proposed Approval

If EPA approves the Alaska section 112(l) programs as proposed, EPA proposes that, as with Alaska's title V program, the section 112(l) programs would apply to all sources within all geographic regions of the State of Alaska, except within ''Indian Country,'' as defined in 18 U.S.C. section 1151.

IV. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on all aspects of this proposed action. Copies of the State's submittal and other information relied upon for the proposed action are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed action. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. EPA will consider any comments received by October 18, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must

[16] ''Hazardous air contaminant'' is a State term that has the same meaning as the federal term ''hazardous air pollutant.'' *See* AS 46.14.990.

[17] Under this streamlined approach, Alaska will only need to send a letter of request to EPA for all future NESHAP regulations which the State has adopted by reference. As appropriate, EPA would in turn respond to this request by sending a letter back to the State delegating the appropriate NESHAP standard(s) as requested. No further formal response from the State would be necessary at this point, and if a negative response from the State is not received within 10 days of this letter of delegation from EPA, the delegation would then become final. Such delegations will periodically be published in the Federal Register.

prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 9, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–23785 Filed 9–17–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 95

[PP Docket No. 93–253; FCC 96–330]

Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The *Further Notice of Proposed Rule Making* (FNPRM) tentatively concludes that the 25 percent bidding credit available to women- and minority-owned applicants in IVDS is not supported by the record, and seeks additional evidence to support the provision of the bidding credit to women- and minority-owned applicants in light of the Supreme Court's decision in *Adarand*. The FNPRM also seeks comment on whether and how the Commission should extend bidding credits to small businesses. The FNPRM also requests comment on whether the Commission should implement a tiered bidding credit scheme to provide varying bidding credit amounts to small businesses of different sizes and modify its small business definition. The FNPRM also tentatively concludes that the Commission should increase the upfront payments from $2,500 for every five licenses won to $9,000 per Metropolitan Statistical Area license won, and $2,500 per Rural Statistical Area license won.

DATES: Comments must be submitted on or before October 3, 1996; reply comments must be submitted on or before October 10, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Wireless Telecommunications Bureau, (202) 418–0680 or Christina Eads Clearwater, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making* in PP Docket No. 93–253; FCC 96–330, adopted August 6, 1996 and released September 10, 1996. The complete text of the *Sixth Memorandum Opinion and Order and Further Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Title: In the Matter of Implementation of Section 309(j) of the Communications Act—Competitive Bidding

I. Further Notice of Proposed Rule Making

A. Treatment of Designated Entities

1. In the *Fourth Report and Order,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 24947 (May 13, 1994), 9 FCC Rcd 2330 (*Fourth Report and Order*), the Commission established several special provisions to ensure that designated entities, *i.e.,* small businesses, rural telephone companies, and businesses owned by members of minority groups and women, are given the opportunity to participate both in the competitive bidding process for, and in the provision of, IVDS service. Among other provisions, the rules provided that on one of the two licenses in each market, a 25 percent bidding credit would be awarded to a winning bidder that was a business owned by women or minorities. *See* 47 CFR § 95.816(d)(1). The standard of review applied to federal programs designed to enhance opportunities for racial minorities at the time the IVDS rules were adopted was an intermediate scrutiny standard. In *Adarand Constructors, Inc. v. Peña,* ___ U.S. ___, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995) (*Adarand),* the Supreme Court invalidated the intermediate scrutiny standard for federal race-based programs. The Court held that all racial classifications, imposed by any federal, state or local government actor, must be analyzed by a reviewing court under strict scrutiny. Application of the two-prong strict scrutiny standard of review to provisions designed to encourage minority participation in IVDS requires the Commission to show: (1) a compelling governmental interest exists for taking race into account in licensing allocation decisions, and (2) the provisions in question are narrowly tailored to further the compelling governmental interest established by the record and findings. *Adarand* offers little guidance regarding the specific requirements of this test. However, other cases, such as *Richmond* v. *J.A. Croson Co.,* 488 U.S. 469 (1989) (*Croson*) provide some indications of the type of record necessary to meet the strict scrutiny standard.

2. In *Croson,* the Supreme Court applied strict scrutiny to invalidate as unconstitutional a municipality's partial set-aside for minority-owned businesses. The Court held that remedying past discrimination constitutes a compelling interest, whether the discrimination was committed by the government or by private actors within its jurisdiction. Other courts have also held remedial measures—those intended to compensate for past discrimination—to be compelling governmental interests. In *Croson,* however, the Court made clear that an interest in remedying general societal discrimination could not be considered compelling because a ''generalized assertion'' of past discrimination ''has no logical stopping point'' and would support unconstrained uses of racial classifications.

3. The Supreme Court in *Croson* noted the high standard of evidence required for the government to establish a compelling interest. It stated that the government must demonstrate a ''strong basis in evidence for its conclusion that remedial action was necessary'' and that such evidence should approach ''a prima facie case of a constitutional or statutory violation of the rights of minorities.'' Other courts, in cases decided after *Croson,* have held that

statistical evidence can be probative of discrimination in the remedial setting, and that anecdotal evidence can buttress statistical evidence.

4. As indicated above, once a compelling governmental interest is established, narrow tailoring, the second prong of the strict scrutiny test, must also be shown. This requirement is intended to ensure ''that the means chosen 'fit' [the] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.'' The Court in *Croson* required that the government's remedial actions be narrowly tailored ''to break down a pattern of deliberate exclusion'' and stated that broader relief could be justified only on the basis of ''evidence of a pattern of individual discriminatory acts * * * supported by appropriate statistical proof * * *''. Different factors have been used by courts to determine, under a strict scrutiny standard, whether a program is narrowly tailored. These include the following: (1) Whether race-neutral measures were considered before adopting race-conscious measures; (2) the scope of the program, and whether it contains a waiver mechanism that facilitates narrowing of that scope; (3) the comparison of any numerical target to the number of qualified minorities in the relevant sector; (4) the duration of the program, and whether it is subject to periodic review; (5) the manner in which race is considered, whether as one factor among several or as determinative; and (6) the degree and type of burden on non-minorities.

5. An intermediate scrutiny standard of review currently applies to gender-based measures. Under this standard, a gender-based provision is constitutional if it serves an important governmental objective and is substantially related to achievement of that objective. The Supreme Court has not addressed constitutional challenges to federal gender-based programs since *Adarand*. However, the Supreme Court recently upheld a constitutional challenge to a state gender-based program in *United States* v. *Commonwealth of Virginia,* 1996 WL 345786 (1996) and reaffirmed the application of an intermediate standard of review to gender-based measures. In that case, the Court first indicated that parties defending their gender-based governmental action must demonstrate an ''exceedingly persuasive justification'' for their action, then stated that the parties must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.

6. The evidence supporting the gender- and race-based provisions cited in the *Fourth Report and Order* primarily shows: (1) broad discrimination against racial groups and women by lenders; and (2) underrepresentation of these groups as owners and employees in the communications industry. At present, the Commission believes that the record is insufficient to demonstrate a compelling interest under the strict scrutiny standard to support the race-based incentive programs of IVDS because it reflects primarily generalized assertions of discrimination. *Adarand* and *Croson* make clear that only a record of discrimination against a particular racial group would support remedial measures designed to help that group. Therefore, the Commission believes that a record of discrimination against minorities in general is not sufficient. Specific evidence of discrimination against particular racial groups would be required to support a rule for any group. Although the Commission has general evidence of discrimination against certain racial groups, none of the evidence appears to satisfy the strict scrutiny standard.

7. Thus, the Commission tentatively concludes that the present record in support of its race-based IVDS provisions is insufficient to satisfy strict scrutiny. The Commission seeks comment on this tentative conclusion. The Commission also requests comment on whether the IVDS provisions promote a compelling governmental interest and, more particularly, whether compensating for discrimination in lending practices and in practices in the communications industry constitutes such an interest. The Commission also asks interested parties to comment on nonremedial objectives that could be furthered by the minority-based provisions of the IVDS rules and whether they could be considered compelling governmental interests, such as increased diversity in ownership and employment in the communications industry or increased industry competition. In commenting, the Commission asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of specific racial groups into the field of telecommunications. Examples of relevant evidence could include discrimination against minorities trying to obtain FCC licenses for auctioned or non-auctioned spectrum; discrimination against minorities seeking positions of ownership or employment in communications or related businesses; discrimination against minorities attempting to obtain capital to start up or expand a telecommunications enterprise, including terms and conditions; and discrimination against minorities operating telecommunications businesses, including treatment by vendors, FCC licensees, and suppliers.

8. The Commission also asks those parties who conclude that the race-based provisions serve a compelling governmental interest to comment on whether the provisions are narrowly tailored to serve that interest. Are these provisions sufficiently narrow in scope? Do they unduly burden non-minorities? Would race-neutral measures further the same interests and achieve the same objectives as race-conscious measures?

9. In addition, the Commission also tentatively concludes that the present record in support of the gender-based IVDS rules may be insufficient to satisfy intermediate scrutiny. The Commission seeks comment on its tentative conclusion. The Commission also seeks comment on whether there are remedial or nonremedial goals that would satisfy the ''important governmental objective'' requirement of the intermediate scrutiny standard such as, for example, increased participation of women in the FCC-licensing process for auctioned spectrum. Are the gender-based IVDS rules ''substantially related'' to the achievement of such objectives? Just as the Commission requested above, in addressing evidence to support IVDS race-based provisions, it asks parties to submit statistical data, personal accounts, studies, or any other data relevant to the entry of women into the field of telecommunications.

10. The Commission also is interested in supplementing the current record to support race- and gender-based provisions in its other rules. In this regard, the Commission initiated a comprehensive rule making proceeding to explore market barriers to women- and minority-owned businesses, as well as small businesses, pursuant to Section 257 of the Communications Act. *See* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Notice of Inquiry,* GN Docket No. 96–113, 61 FR 33066 (June 26, 1996), FCC 96–216 (released May 21, 1996). The record created in response to this FNPRM will also be incorporated into that Docket.

11. The Commission undertakes this effort to support its auction rules because the Commission is committed to fulfilling the Congressional mandate to provide opportunities for women- and minority-owned businesses through the competitive bidding process. The

Commission believes, however, that marshaling sufficient evidence to satisfy the strict scrutiny standard of review now applicable to federal race-based programs may be a time-consuming process, and the Commission is mindful that it may not fulfill its other obligations under Section 309(j) if the Commission delays the award of IVDS licenses until that process is complete.

12. The Commission notes that the high number of defaulting bidders in the initial IVDS auction, combined with the delay in auctioning off the RSA licenses, has caused a significant delay in awarding IVDS licenses. This delay has hurt businesses that are interested in developing competitive IVDS. In addition, where one MSA bidder has defaulted, the second winning bidder has had a significant head start over the ultimate winner of the first license in providing service. Given that, the Commission authorized two licenses per service area in an attempt to have both licensees make service available in the near future, such an advantage was not contemplated when the Commission established the rules authorizing reauctioning of licenses. The Commission also believes that both Congress and consumers expect us to promote the rapid development of IVDS. Balancing its obligation to provide opportunities for women- and minority-owned businesses to participate in spectrum-based services against its statutory duties to facilitate the rapid delivery of new services to the American consumer and promote efficient use of the spectrum, the Commission tentatively concludes that it should not contribute any further delays to the IVDS auction by postponing the auction to adduce sufficient evidence to support the race- and gender-based IVDS provisions. While the Commission could proceed with the IVDS auction under the current rules, the Commission tentatively concludes that this course of action would not serve the public interest because it may result in litigation that would delay the auction, the dissemination of additional IVDS licenses, and, ultimately, the introduction of competition. As a result, the Commission tentatively concludes that it will adopt race and gender neutral provisions, but continue to maintain the provisions for small businesses which it believes adequately benefit most of the businesses owned by minorities and/or women. The Commission believes these proposed changes will enable it to meet its Congressional-mandate and proceed as expeditiously as possible to auction the remaining IVDS licenses. The Commission seeks comment on these tentative conclusions.

13. In the *Second Report and Order,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994), 9 FCC Rcd 2348 (1994) (*Second Report and Order*), the Commission adopted a definition of small business for the generic auction rules. This definition requires the entity to demonstrate that, together with its affiliates, its net worth is no more than $6 million, and its annual profits are no more than $2 million for the previous two years. In the *Fourth Report and Order,* the Commission determined that these definitions should apply to applicants for IVDS auctions. *See* 47 CFR § 95.816(d). Since that time, however, the Commission has defined small business for other services based on the gross revenues on the applicant and its affiliates for the preceding three years. *See* 47 CFR § 24.720 (broadband PCS); 47 CFR § 24.320 (narrowband PCS); 47 CFR § 90.814(b)(1) (900 MHz SMR); 47 CFR § 90.912(b) (800 MHz SMR).

14. The Commission proposes to define small businesses based on gross revenues for the preceding three years. Specifically, it proposes to define a small business as an entity whose average gross revenues for each of the preceding three (3) years do not exceed $15 million. Additionally, the Commission proposes to define a very small business (as discussed later in connection with the tiered bidding credits) as an entity with less than an average of $3 million in gross revenues in each of the last three (3) years. The Commission believes that a company's gross revenues is a more accurate indicator of its size than is its net worth or annual profits. A gross revenues test is a clear measure for determining the size of a business and is an established method of determining size eligibility for various types of federal programs that aid small businesses. *See, e.g.,* 13 CFR § 121.902. Moreover, the Commission observes that this approach is consistent with its approach in 900 MHz SMR. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Order on Reconsideration and Seventh Report and Order,* PR Docket No. 89–553, PP Docket No. 93–253, GN Docket No. 93–252, FCC 95–395, 60 FR 48913 (September 21, 1995) (*Second Order on Reconsideration and Seventh Report and Order*). Commenters are invited to address whether the Commission should modify its small business definition and calculate small business eligibility based on gross revenues, rather than net worth and annual profits. Commenters should discuss what gross revenues threshold is appropriate for defining small business in the IVDS context.

15. The Commission also proposes a five percent attribution threshold for purposes of determining eligibility as a small business. Under such a standard, the gross revenues and affiliations of any investor in the applicant would not be considered so long as the investor holds less than a five percent interest in the applicant. Alternatively, the Commission seeks comment on whether it should count the gross revenues of controlling principals in the applicant and its affiliates for purposes of determining small business status. In determining attribution when IVDS licensees are held indirectly through intervening corporate entities, the Commission proposes to use the multiplier adopted in the *CMRS Third Report and Order* for the spectrum aggregation cap. *See CMRS Third Report and Order,* GN Docket No. 93–252, 59 FR 9945 (November 12, 1994), 9 FCC Rcd 7988 (1994). The Commission seeks comment on these tentative conclusions.

16. A bidding credit acts as a discount on the winning bid amount that a bidder actually has to pay for the license. The current IVDS rules provide for a bidding credit of 25 percent to businesses owned by members of minority groups or women. 47 CFR Section 95.816(d)(1).

17. The Commission seeks comment on whether it should extend a single bidding credit to all small businesses as it did for the C block PCS auction. If the Commission chooses to adopt a single small business bidding credit for IVDS, how big should the credit be? Should the Commission retain the 25 percent bidding credits currently provided and make it available to all small businesses bidding in the IVDS auction? If it extends a bidding credit to small businesses, the Commission expects that a significant number of women and minority-owned businesses will continue to qualify for bidding credits under the rules. *See, e.g., Second Report and Order and Second Further Notice of Proposed Rule Making,* PR Docket No. 89–553, 60 FR 50583 (September 29, 1995), 10 FCC Rcd 6884 (1995). The Commission believes that this may be the most effective way to amend the rules and proceed with the auction. The Commission also believes that this proposal will meet the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative

technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Moreover, as the Commission observed in the *Fourth Report and Order*, the Commission expects that the capital requirements for IVDS will be relatively low, particularly with respect to the smaller RSA licenses. The Commission therefore anticipates that women- and minority-owned firms, as well as other potential bidders that might lack access to capital, will be able to compete effectively for IVDS licenses. The Commission also points out that the overwhelming majority of IVDS applicants in the past have been small businesses.

18. In the alternative, should the Commission offer tiered bidding credits, such as 15 percent for small businesses with aggregate gross revenues under $3 million and 10 percent for businesses with gross revenues between $3 million and $15 million? The Commission tentatively concludes that given the relatively low bids that IVDS licenses garnered in the July 1994 auction, IVDS may attract smaller businesses, thus justifying a tiered bidding credit. The Commission seeks comments on this tentative conclusion. Commenters are asked to address whether this approach would better reflect the difficulties that small businesses of varying size face in accessing capital. Commenters also should discuss what size definitions and bidding credit amounts are appropriate if the Commission adopts a tiered bidding credit scheme.

19. Commenters are also asked to address whether the Commission should completely eliminate the bidding credit. Commenters should address whether a bidding credit is needed to permit small businesses to compete effectively for IVDS spectrum. As noted above, IVDS, with its relatively low capital entry requirements, is well suited for small business investment and a bidding credit may not be needed to foster participation by these entities. *See Fourth Report and Order*. Given the success of small businesses in the MSA auction, commenters are invited to address whether the Commission should revisit that conclusion.

B. Upfront Payments

20. In the *Fourth Report and Order*, the Commission determined that the appropriate upfront payment for IVDS auctions would be based on the maximum number of licenses a bidder desired to win. Bidders were required to present a cashier's check for $2,500 in order to bid on the IVDS licenses, and would be required to have $2,500 upfront money for every five licenses they won, effectively constituting an upfront payment of $500 per license won. Following the initial IVDS auction, certain high bidders requested waivers to permit them to delay payment of their required down payments. Further, a substantial number of bidders defaulted on their winning bids, requiring us to reauction those licenses.

21. The Commission tentatively concludes that the upfront payment required under the *Fourth Report and Order* is inadequate. In several *ex parte* filings, parties indicated their support for increased upfront payment amounts. The requests for waiver to delay making down payments, coupled with the significant number of defaulting winning bidders, lead the Commission to believe that the initial upfront payment was too low to deter insincere, speculative bidding. The Commission proposes that more appropriate upfront payments would be $9,000 per MSA license and $2,500 per license for RSA markets, for the maximum number of licenses on which the applicant wishes to bid. The Commission reaches these proposed amounts by calculating values for each license of $.02 per MHz per pop, which is the standard methodology for determining upfront payment amounts. *See Second Report and Order*; *see also Fourth Report and Order*. This calculation yielded average upfront payments of approximately $9,011 per license for MSA markets (not counting the 9 markets previously awarded by lottery), and approximately $2,742 per license for RSA markets. The Commission's proposed upfront payments round these figures. The Commission believes that revised upfront payments in these amounts would attract as many qualified bidders as possible, while providing an adequate deterrent against frivolous bidding. The Commission seeks comment on this tentative conclusion and the proposal to increase the upfront payment amounts, as described.

II. Procedural Matters

Initial Regulatory Flexibility Analysis

22. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this FNPRM regarding the interactive video and data service (IVDS). Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines provided above.

A. Reason for Action:

23. The further notice in this rule making proceeding was initiated to secure comment on proposals to eliminate all race- and gender-based provisions in the competitive bidding rules for the IVDS auction only. The proposals advanced in the *Further Notice of Proposed Rule Making* also are designed to implement Congress's goal of giving small businesses, rural telephone companies, and businesses owned by members of minority groups and women the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. § 309(j)(4)(D). The Commission also seeks to modify its rule concerning the amount it requires for upfront payments from applicants to participate in the auction in accordance with 47 U.S.C. § 309(j)(3).

B. Objectives

24. The Commission proposes changes to its rules for IVDS to address legal uncertainties raised by the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña*, 115 S.Ct. 2097 (1995). Specifically, the Commission seeks to ensure competition and ownership diversity by avoiding a lengthy delay in the conduct of the auction caused by probable legal challenges to the rules. The Commission also proposes to increase the upfront payment amounts for IVDS licenses because it believes the current upfront payment amount was insufficient to ensure against a significant number of defaulting winning bidders and to ensure payment of applicable penalties arising from defaults.

C. Legal Basis

25. The proposed action is authorized under Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 303(r) and 309(j), as amended.

D. Description and Estimate of Small Entities Subject to the Rules

26. The proposed changes in the regulations would affect a number of entities both large and small. The Commission was directed by the Communications Act, 47 U.S.C. § 309(j) to make provisions to ensure that smaller businesses, and other designated entities, have an opportunity to participate in the auction process. To fulfill this statutory mandate, these proposed rules are designed to attract participation by the small entities. The small businesses who will be subject to

the rules would be those which choose to operate interactive video and data services, a class of wireless communications services with a wide variety of uses. The services will generally be offered to consumers who wish to subscribe to those services.

27. IVDS is a communications based service subject to regulation as a wirelsss provider of pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services. The Small Business Administration (SBA) defines small businesses in SIC 4841 as businesses with annual gross revenues of $11 million or less. 13 CFR § 121.201. In this *Further Notice of Proposed Rule Making,* the Commission proposes to extend special provisions to small businesses with annual gross revenues for each of the preceding years three years that do not exceed $15 million, and additional benefits to very small businesses who have less than an average of $3 million in gross revenues in each of the last three years. The Commission observes that this proposal is consistent with its approach in other wireless services, *see e.g.,* the 900 MHz specialized mobile radio service, and is narrowly tailored to address the capital requirements for IVDS. The Commission is soliciting SBA approval for the small business definitions for this and other auctionable services.

28. The Commission estimate of the number of small business entities subject to the rules begins with the Bureau of Census report on businesses listed under SIC 4841, subscription television services. The total number of entities under this category is 1,788. There are 1,463 companies in the 1992 Census Bureau report which are categorized as small businesses providing cable and pay TV services. The Commission knows that many of these businesses are cable and television service businesses, rather than IVDS licensees. Therefore, the number of small entities currently in this business which will be subject to the rules will be less than 1,463.

29. The first IVDS auction resulted in 170 entities winning licenses for 594 MSA licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the Commission defined a small business as an entity with a net worth not in excess of $6 million and average net income after Federal income taxes for the two preceding years not in excess of $2 million. In the upcoming IVDS reauction of approximately 100 licenses in metropolitan service area (MSA) markets and auction of 856 licenses in rural service area (RSA) markets (two licenses per market), the Commission has proposed bidding credits and installment payments to encourage participation by small and very small businesses. The Commission cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under the proposed rules. Given the success of small businesses in past IVDS auctions, and that small businesses make up over 80 percent of firms in the subscription television services industry, the Commission assumes for purposes of this IRFA that all of the licenses may be awarded to small businesses, which would be affected by the proposed rules. The Commission estimates that some companies will win more than one license, as happened in the earlier IVDS auction.

30. Applicants seeking to participate in the auction also will be subject to these proposed rules. It is impossible to accurately predict how many small businesses will apply to participate in the auction. In the last IVDS auction, there were 289 qualified applicants. The Commission does not anticipate that there will be significantly more participants in the subsequent IVDS auction.

E. Reporting, Recordkeeping and Other Compliance Requirements

31. All small businesses which choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as was required under part 1, subpart Q of the FCC's Rules, 47 CFR part 1, subpart Q. Any small business applicant wishing to avail itself of those provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small. The proposed rule changes will eliminate the requirements that small businesses owned by minorities and/or women demonstrate that their owners are minorities and/or women. There are no additional reporting or recordkeeping requirements proposed by these rules.

32. Each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a small business wishing to qualify for installment payments and bidding credits is a small business. Applicants which do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 600, which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the system's design.

F. Federal Rules Which May Overlap, Duplicate or Conflict With These Rules

33. None.

G. Significant Alternative Minimizing the Impact on Small Entities Consistent with the Stated Objectives

34. In the *Further Notice of Proposed Rule Making,* the Commission tentatively concludes that the possibility of legal challenges to the rules could cause lengthy delays in issuing licenses in this service. Since the first IVDS auction, the Supreme Court in *Adarand* v. *Peña,* 115 S. Ct. 2097 (1995) raised the legal standard for assessing the constitutionality of federal programs which take race into account. Such programs are now subject to a strict scrutiny standard of review. Although programs which take gender into account are reviewed under intermediate scrutiny, *United States* v. *Commonwealth of Virginia,* 1996 WL 345786 (United States Supreme Court, June 26, 1996), the Commission believes there is a significant risk, under either standard, that the auction would be subject to delay through litigation over the constitutionality of the program. The Commission is currently gathering evidence, through a Notice of Inquiry proceeding pursuant to Section 257 of the Telecommunications Act of 1996 on barriers to market entry for small businesses, including those owned by women and minorities. The Commission realizes that this change may impose a burden on small businesses owned by women or minorities. It seeks comment on whether there are alternatives which will enable it to avoid the delays of litigation, which adversely affect all small businesses and still make provision for these designated entities.

35. The *Further Notice of Proposed Rule Making* solicits comment on a

variety of alternatives set forth herein. Any significant alternatives presented in the comments will be considered. The *Further Notice of Proposed Rule Making* proposes setting new standards for the measurement of small businesses. The earlier standard defined a small business in IVDS as a business, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. 47 CFR § 1.2110. The Commission is proposing to define a small business as a business with average gross revenues for each of the preceding three (3) years that do not exceed $15 million, and define a very small business as one which has less than an average of $3 million in gross revenues in each of the last three years. The Commission seeks comment on the classes of small entities and how many total entities, existing and potential, would be affected by the proposed rules in the *Further Notice of Proposed Rule Making.* These changes would be consistent with the definitions used in other auctionable mobile radio services such as 900 MHz specialized mobile radio services. The Commission requests each commenter to identify whether it is a ''small business'' under this definition.

36. *The Further Notice of Proposed Rule Making* proposes providing a bidding credit to small businesses. The Commission seeks comment on whether a 25 percent bidding credit is appropriate for all small businesses or whether a tiered bidding credit, 10 percent for small businesses and 15 percent for very small businesses, is appropriate. The Commission seeks comment on the impact of the creation of a larger pool of small businesses—defining as small all businesses with gross revenues of $15 million or less. The Commission proposes businesses with average gross revenues of $15 million or less in each of the last three (3) years be eligible for bidding credits, as opposed to the previous standard of an entity, together with its affiliates, that has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. It requests comment on how this larger pool of small businesses will affect the smaller businesses which choose to participate in the auction. Additionally, the Commission is particularly interested in learning whether tiered bidding credits will offset any potential competitive disadvantage to those smaller businesses.

37. The Commission proposes to raise the upfront payment to $9000 per MSA and $2500 per RSA for businesses participating in IVDS auctions. This rule change is designed minimize the adverse impact on the IVDS service of participation in the auction by speculators and other frivolous bidders. The Commission realizes that a higher upfront payment may pose a greater obstacle to participation by smaller businesses. It seeks comment on its tentative conclusion that the previous upfront payment was too low. The Commission also requests commenters to address the question of whether there are other means to deter speculative or frivolous bidders who do not meet the commitments they make in bidding in IVDS auctions.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–23940 Filed 9–17–96; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 182
Wednesday, September 18, 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

Submission for OMB Review; Comment Request

September 13, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Food and Consumer Service

Title: Integrated Quality Control Review Worksheet

Summary: Quality Control monitors the error rate in determining eligibility and benefit levels for qualified recipients. Form FCS 380 is the source document from which other reports are compiled by State officials and sent to the Food and Consumer Service. This integrated review schedule has been developed to assist when there are overlaps in the population served by Federal assistance programs

Need and Use of the Information: State agencies are required to perform Quality Control reviews for each of three Federal assistance programs: Aid to Families with Dependent Children (AFDC), Medicaid and Food Stamps

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

Number of Respondents: 61,840

Frequency of Responses: Recordkeeping; Reporting: Weekly, Monthly

Total Burden Hours: 558,019

- Agricultural Marketing Service

Title: Cranberries Grown in the States of MA, RI, CT, NJ, WI, MI, MN, OR, WA, and Long Island in the State of New York, Marketing Order No. 929

Summary: The information collected establishes the cranberry marketing committee and provides production and disposition figures for management of the order

Need and Use of the Information: The information used to correlate the supply of cranberries available for sale in the various trade channels with the demand in those outlets

Description of Respondents: Business or other for-profit; Farms

Number of Respondents: 1,083

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly

Total Burden Hours: 874

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–23912 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Tonto National Forest, AZ

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming public meeting on the proposed Forest Service withdrawal application to protect the foreground area's scenic values along State Highway 87 between Slate Creek and the Town of Payson, Arizona. This public meeting will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: The public meeting will be held on October 17, 1996, from 6:00 p.m. to 7:00 p.m.

ADDRESS: Tonto National Forest, Supervisor's Office, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Lisa Subcasky, Tonto National Forest, (602) 225–5200 or Rod Byers, Payson Ranger District, (520) 474–7900.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal for State Highway 87 which was published on February 6, 1995, (24 FR 7066) is hereby modified to allow for a public meeting as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.3–1(2)v.

This meeting will be open to all interested persons who would like to comment in person or to submit written comments on this subject. All comments should be submitted to the Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006, by October 31, 1996.

Dated: September 10, 1996.

Judith A. Miller,

Acting Forest Supervisor.

[FR Doc. 96–23850 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–11–M

Steward Mining Operation, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for the purpose of approving a Plan of Operations to conduct mining operations in the City Creek Watershed. The EIS will document the environmental analyses and effects of a range of alternatives, including a no-action alternative. The EIS will analyze at least three alternatives: (1) The no action alternative; (2) the proposed action, as submitted by the operator; and (3) a modification to the proposed action, which includes appropriate mitigation measures. Under the 1872 mining law, the no-action alternative is not a viable alternative. It is required by the Council on Environmental Quality regulations and serves as a baseline to measure the environmental effects of other alternatives. Additional alternatives and/or revisions to the above alternatives will be evaluated in the EIS. This approval is in accordance with direction set forth in the Umpqua National Forest Land and Resource Management Plan (September 1990), as amended, which provides for mining operations within applicable standards, guidelines, and management prescriptions. The agency invites written comments on the scope of this project. In addition, the agency gives

notice of this analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this proposal must be received by October 4, 1996.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Ned Davis, District Ranger, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Debbie Anderson, EIS Project Leader, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon 97443.

SUPPLEMENTARY INFORMATION: The proposed mining operation will construct and/or maintain approximately .65 mile of road, .9 mile of cat road, 2.5 miles of ATV trail, 1.1 miles of foot trail, and proposes to move approximately 21,000 cubic yards of ore and/or waste rock material. On the unpatented claims (27 in total), discovery cuts and veins would be sampled, existing adits would be opened and timbered, a new adit would be excavated, and corners and claim lines would be brushed. The proposal also includes installing a sluice box in St. Peter Creek, a catch basin and a dam in a small tributary, installation of a 4' spring box, and maintenance and installation of two gates.

The 6,458 acre City Creek watershed encompasses both City Creek and St. Peter Creek. A tributary to Steamboat Creek, City Creek is located 17 river-miles north of the confluence of Steamboat Creek and the North Umpqua River. Steamboat Creek is located approximately 38 miles East of Roseburg, Oregon.

Scoping for this project began in January of 1996 through the environmental assessment process. Public notice and participation has occurred through notices in Forest's quarterly Schedule of Proposed Actions, field trips, and public comments received during the formal 30-day comment period under 36 CFR 215. The extensive information gathered during the environmental assessment process will be used in the preparation of the draft EIS.

The scoping effort for this project has achieved the following:

1. Identification of issues.

2. Identification of key issues.

3. Elimination of insignificant issues, issues which have been covered by a relevant previous environmental process, and issues that could be successfully mitigated.

4. Exploration of additional alternatives based on the key issues identified during the scoping process.

5. Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The following issues have been identified as a result of the extensive scoping performed through the environmental assessment process: late-successional species; late-successional habitat; threatened, endangered and sensitive species; survey and manage species; water quality; acquatic habitat; archaeological sites from road maintenance; and introduction and dispersal of noxious weeds and aggressive non-native species.

The 1990 Umpqua National Forest Land and Resource Management Plan, as amended, allocates Steamboat Creek and all of its tributaries, including City and St. Peter Creeks, as a Late-Successional Reserve and Tier 1 Key Watershed. The Forest Plan's overall objective for Late Successional Reserves is to protect and enhance conditions of late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl. In addition, tier 1 Key Watersheds contribute directly to conservation of at-risk anadromous salmonids, bull trout, and resident fish species. They also have a high potential of being restored as part of a watershed restoration program. The city and St. Peter Creek watersheds are also a part of Management Area 13, as allocated by the 1990 Umpqua National Forest Land and Resource Management Plan, which provides for additional emphasis for the orderly exploration, development, extraction, and production of mineral resources on lands within the Fairview-Bohemia mineralized area.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in October of 1996. At that time, copies of the draft EIS will be distributed to interest and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a Notice of Availability of the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviews of the draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers position and contentions. *Vermont yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the 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 comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement.

The final EIS is scheduled to be completed by January, 1997. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS, as well as applicable laws, regulations, and policies considered in making the decision regarding this proposal. The lead agency is the Forest Service. Don Ostby, Forest Supervisor, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon, 97470, is the responsible official. As the responsible official, he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 215 and 36 CFR Part 251).

Dated: September 10, 1996.

Don Ostby,

Forest Supervisor.

[FR Doc. 96–23859 Filed 9–17–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reports for Scientific Research and Enhancement, Public Display, and Photography Permits and General Authorization for Level B Harassment Under the Marine Mammal Protection Act (MMPA) , Fur Seal Act, and the Endangered Species Act (ESA).

Agency Number: None.

OMB Control Number: 0648–0084.

Type of Request: Revision of a currently approved collection.

Burden: 7,260 hours.

Number of Respondents: 458.

Avg Hours Per Response: Varies but ranges between 2 and 29 hours depending on the requirement.

Needs and Uses: The MMPA, ESA and the Fur Seal Act mandate the protection and conservation of marine mammals and prohibit the taking, importation, and export of protected species except under certain circumstances. Exemptions for scientific research, enhancement, photography for educational or commercial purposes, public display, and certain other limited purposes are allowed provided permits are applied for and received or other necessary authorization obtained. Should a permit be granted, then certain other reporting requirements must be adhered to. Without this information, the MMPA could not be administered.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, federal government, and state, local or tribal governments.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Adele Morris (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC's Acting Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: September 12, 1996.

Linda Engelmeier,

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

[FR Doc. 96–23869 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–22–P

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration.

Title: Economic and Social Questionnaire for West Coast Fixed Gear Groundfish Limited Entry Vessel and Permit Owners.

Agency Number: N/A.

OMB Number: N/A.

Type of Request: New Collection.

Burden: 60.

Number of Respondents: 240.

Average Hour Per Response: .25.

Needs and Uses: Data will be collected from vessel and permit owners on economic and social characteristics of firms harvesting in the West Coast limited entry fixed gear sablefish fishery. The fishery is currently managed as a derby fishery which has become intolerably short. The data to be collected is intended to assist the Council and Secretary of Commerce in evaluating the effects of alternatives to derby fishery management. These alternatives have substantial allocative implications. There is broad industry support for certain provisions in the alternatives, e.g. a requirement that the owner of the permit or vessel be on board the vessel during fishing operations. However, the information necessary to determine the degree to which such provisions would change or maintain the current practices is not available. The questions to be asked of vessel and permit owners in the fixed gear sablefish sector will cover the following topics: legal organization of ownership (e.g. individual, partnership, corporation, etc.), participation of the vessel owner in fishing operations, status of family members as participants in the fishing operation, number of employees, number of years of participation in the fishery, vessel's home port, number of dependents, dependence on fishing income, level of household income. Questions on other social characteristics (age, sex, marital status, education level) may also be asked.

Affected Public: Business or other for-profit.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Adele Morris, (202) 395–3122.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 102, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1996.

Linda Engelmeier,

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

[FR Doc. 96–23879 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–22–P

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration.

Title: Cost and Earnings Questionnaire for the Pacific Whiting Industry.

Agency Number: N/A.

OMB Number: N/A.

Type of Request: New Collection.

Burden: 79.

Number of Respondents: 79.

Average Hours Per Response: 1.

Needs and Uses: Data on the costs and earnings of the four major groups of participants in the Pacific whiting industry will be collected. The following groups will be surveyed: (1) shorebased processors of whiting; (2) at-sea processors of whiting; (3) catchersboats that harvest Pacific whiting; and (4) processors of whiting wastes. Companies associated with these groups will be surveyed for production, cost, and revenue information. In general, questions will be asked concerning amount of time spent processing or harvesting whiting; amounts of whiting harvested, processed, or converted to waste; the

harvesting or processing of species other than whiting; ex-vessel and wholesale revenues; product recovery rates; and fixed, variable, and capital costs. The data will be used for the Regulatory Impact Review (E.O. 12866) and the Regulatory Flexibility Act of the Pacific Fishery Management Council and the Secretary of Commerce. As required by law, data will be kept on a confidential basis.

Affected Public: Business or other for-profit.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Adele Morris, (202) 395–3122.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 102, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1996.

Linda Engelmeier,

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

[FR Doc. 96–23880 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–22–P

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Initiation of New Shipper Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Vince Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–2815, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on stainless steel bar from India, which has a February anniversary date.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. We intend to issue the final results of review not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
India: Stainless Steel Bar, A–533–810: Ferro Alloys Corporation Limited	02/01/96–07/31/96

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 353.22(h).

Dated: September 11, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 96–23917 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–DS–P

Arizona State University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–069. *Applicant:* Arizona State University, Tempe, AZ 85287–1501. *Instrument:* Image Analysis System with Macro Accessory Package. *Manufacturer:* Imaging Research Inc., Canada. *Intended Use:* See notice at 61 FR 39948, July 31, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a ''paintbrush'' function to permit definition of a precise and controllable region on an autoradiograph for optical density evaluation of anatomical features. The National Institutes of Health advises in its memorandum dated July 24, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23918 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–091. *Applicant:* University of California, San Diego, Department of Medicine 0931, 9500 Gilman Drive, La Jolla, CA 92093–0931. Instrument: Digital Sleep Recorder, Model VitaPort 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The instrument will be used to study the effects of microgravity on the human body, especially sleep functions, circadian rhythm changes and pulmonary function. *Application accepted by Commissioner of Customs:* August 22, 1996.

Docket Number: 96–092. Applicant: University of Pittsburgh Medical Center, 200 Lothrop Street, Pittsburgh, PA 15213–2582. Instrument: Microvolume Stopped-Flow Spectrometer, Model SX.18MV. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of water, proton and small non-electrolyte transport across biological membranes and membrane properties of barrier epithelia. Experiments will be conducted to gain an understanding of water and solute flow across biological membranes. This includes detailed measurements of the permeability properties of membranes which can only be satisfactorily measured with this instrument. *Application accepted by Commissioner of Customs:* August 23, 1996.

Docket Number: 96–093. *Applicant:* The Ohio State University, 2041 College Road, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM300. Manufacturer: Philips, The Netherlands. *Intended Use:* The instrument will be used for general morphological and structural studies of ceramics and metals, including high-temperature superconductors, high temperature metal alloys, evaporated metal thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. *Application accepted by Commissioner of Customs:* August 23, 1996.

Docket Number: 96–094. *Applicant:* University of Oklahoma, Purchasing Department, 660 Parrington Oval, Room 321, Norman, OK 73019. *Instrument:* Eye Movement Measuring Device. *Manufacturer:* Dr. Bouis, Germany. *Intended Use:* The instrument will be used in studies to determine how the printed frequency of two adjacent words influence the benefit of having parafoveal preview of the second word as part of continuing research that contributes to the understanding of how much information readers can process on a single fixation. The device will also be used for educational purposes in undergraduate and graduate level courses that provide practical research experience to students. Application accepted by Commissioner of Customs: August 28, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–23919 Filed 9–17–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 96–73]

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 96–73, 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

06 SEP 1996

In reply refer to:
I-04292/96

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. 96-73, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Brunei for defense articles and services estimated to cost $81 million. Soon after this letter is delivered to your office, we plan to notify the news media.

This report represents a re-notification to the Congress of the previous Transmittal No. 96-51, due to a significant change in program cost while maintaining the original program scope.

Sincerely,

H. Diehl McKalip
Acting Director

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

Attachments

Transmittal No. 96-73

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

(i) Prospective Purchaser: Brunei

(ii) Total Estimated Value:

Major Defense Equipment*	$66 million
Other	$15 million
TOTAL	$81 million

(iii) Description of Articles or Services Offered:
Forty-eight HARPOON missiles with containers, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services and other related elements of logistics support.

(iv) Military Department: Navy (LAB)

(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: 06 SEP 1996

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

POLICY JUSTIFICATION

Brunei - HARPOON Missiles

The Government of Brunei has requested the purchase of 48 HARPOON missiles with containers, spare and repair parts, publications and technical documentation, support equipment, personnel training and training equipment, U.S. Government and contractor engineering and logistics support services and other related elements of logistics support. The estimated cost is $81 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 is the first procurement by Brunei of the HARPOON missile which will be used as the primary surface-to-surface anti-ship weapon installed on new off-shore patrol vessels. Brunei will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of these missiles and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell Douglas Missile Systems Company, St. Louis, Missouri. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment to Brunei of two U.S. Government personnel and four contractor representatives for a period up to six months to provide program support commencing with delivery of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 96-73

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 Guidance Section Components of the HARPOON missile are classified Confidential including applicable technical and equipment documentation and manuals.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used in the development of countermeasures or equivalent systems which could reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 96–23744 Filed 9–17–96; 8:45 am]
BILLING CODE 5000–04–C

Department of the Air Force

USAF Scientific Advisory Board Meeting

The F–22 Executive Advisory Group, USAF Scientific Advisory Board, will meet on 18 October 1996 at Marietta, GA. from 8:00 a.m.to 5:00 p.m.

The purpose of the meeting is to provide advice and recommendations on scientific and technical management issues related to the development of the F–22 through continued study and analysis of program progress.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–23817 Filed 9–17–96; 8:45 am]
BILLING CODE 3910–01–P

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History in DoD.

ACTION: Notice of meeting.

1. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 26 Oct 96.

Place: Franklin Court Building, U.S. Army Center of Military History, 1099 14th Street NW, 2nd Floor, Washington, DC 20005–3402.

Time: 0900–1500.

Proposed Agenda: Review and discussion of the status of historical activities in the U.S. Army.

2. Purpose of meeting: The Committee will review the Army's historical activities for FY96 and those projected for FY97 based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

3. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 26 October meeting.

4. Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee chairman may allow public presentations of oral statements at the meeting.

5. All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Franklin Court Building, 1099 14th Street NW, Washington, DC 20005–3402. Telephone number, (202) 761–5402.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–23872 Filed 9–17–96; 8:45 am]
BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New Computer Matching Program Between the Department of Education and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the Department of Education (ED) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between ED and DoD that their records are being matched by computer. The record subjects are ED delinquent debtors who may be current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by ED so as to permit ED to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective October 18, 1996, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and ED has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal Government so that ED can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between ED and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Federal Employee Salary Offset Coordinator, 600 Independence Avenue, SW, ROB 3 Room 5114, Washington, DC 20202–5320.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the Federal Register at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 3, 1996, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: September 12, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program betweem the Department of Education and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Department of Education (ED) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The ED is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of a match:* The purpose of the match is to identify and locate any matched Federal personnel, employed or retired, who owe delinquent debts to the Federal Government under certain programs administered by ED. ED will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by ED of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711, Collection and Compromise; 31 U.S.C. 3716, Administrative Offset; 5 U.S.C. 5514, as amended, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(l) of Executive Order 12731; 4 CFR Ch.II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 34 CFR part 30 - Debt Collection and part 312 - Salary Offset for Federal Employees who are indebted to the United States Under Programs Administered by the Secretary of Education as covered by the Higher Education Act of 1965, as amended (Pub. L. 89–329).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

ED will use personal data from record system identified as 18-40-0024, entitled 'Title IV Program Files,' last published in the Federal Register at 59 FR 17351 on April 12, 1994.

DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor

Agency Debt Collection Data Base,' last published in the Federal Register at 58 FR 10875 on February 22, 1993.

E. *Description of computer matching program:* ED, as the source agency, will provide DMDC with a magnetic tape which contains the names of delinquent debtors in programs ED administers. Upon receipt of the computer tape file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the ED file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to ED. ED is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with ED's source file and for resolving any discrepancies or inconsistencies on an individual basis. ED will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a six month basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between ED and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 96–23817 Filed 09–17–96:45 am]

BILLING CODE 5000–04–F

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 12, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Captioned Films/Videos for the Deaf: Application for Loan Service and Response Form.

Frequency: On Occasion.

Affected Public: Individuals or households; Business or other for-profit; Non-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 6.

Burden Hours: 138,000.

Abstract: This package provides an application form for prospective users of captioned films/videos. The response form provides the registered viewing group with the opportunity to add comments or suggestions for improvement.

[FR Doc. 96–23835 Filed 9–17–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

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, Kirtland Area Office (Sandia).

DATES: Wednesday, September 18, 1996: 6:50 pm–9:30 pm (Mountain Daylight Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW, Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, (505) 845–4094.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:50 pm—Public Comment Period
7:00 pm—Approval of Agenda
7:05 pm—Approval of 8/21/96 Minutes
7:10 pm—Chair's Report
7:15 pm—Update Technical Area II Landfill Cleanup; Environmental Cleanup Site 11 (WWII Proximity Fuse Development); Hazardous Waste Management Facility (Changing Reporting Requirements)
7:45 pm—Management Area 7 Recommendation Approval; Slate/Nominees for Executive Office
8:05 pm—Break
8:15 pm—DOE Sandia National Laboratory Ten-Year Plan
8:40 pm—Waste Isolation Pilot Plant Tour Discussion
8:45 pm—Election of Executive Officers
9:05 pm—New/Other Business
9:15 pm—Agenda Items for Next Meeting
9:20 pm—Public Comment
9:30 pm—Announcement of Next Meeting/Adjourn.

A final agenda will be available at the meeting Wednesday, September 18, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on September 12, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–23928 Filed 9–17–96; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. FE C&E 96–05 & 96–06; Certification Notice 153]

Southwestern Public Service Company (Cunningham Unit #3—C&E 96–05) and (Cunningham Unit #4—C&E 96–06); Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On August 27, 1996, Southwestern Public Service Company submitted two coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of the proposed new baseload powerplants has filed self-certifications in acccordance with section 201(d).

1. Cunningham Unit #3 (Cert 153).
2. Cunningham Unit #4 (Cert 154).

Owner: Southwestern Public Service Company.

Operator: Southwestern Public Service Company.

Location: Hobbs, New Mexico.

Plant Configuration: Simple cycle combustion turbine.

Capacity: 100 megawatts each.

Fuel: Natural gas.

Purchasing Entities: Customers of Southwestern Public Service Company.

In-service Date: June 1, 1997.

Issued in Washington, D.C., September 10, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–23883 Filed 9–17–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket No. FE C&E 96–04; Certification Notice 152]

University of Minnesota Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On August 27, 1996, the University of Minnesota submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another

alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: University of Minnesota.

Operator: Foster Wheeler Twin Cities, Inc.

Location: Minneapolis, Minnesota.

Plant Configuration: Combined cycle.

Capacity: 15 megawatts.

Fuel: Natural gas.

Purchasing Entities: University of Minnesota.

In-Service Date: August 1, 1999.

Issued in Washington, D.C., September 10, 1996

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–23884 Filed 9–17–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC Form No. 592]

Proposed Information Collection and Request For Comments

September 13, 1996.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 592 ''Marketing Affiliates of Interstate Pipelines'' (OMB No. 1902–0157) is used by the Commission to implement the statutory provisions of the Section 311, 501 and 504 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, and Sections 4, 5, 7, 8, 10, 14, 16, and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). The reporting and recordkeeping requirements contained in this collection of information apply only to those major interstate natural gas pipelines involved in transactions with affiliated marketing or brokering companies. The information maintained and provided by the respondents is used by the Commission to monitor pipelines' transportation, sales, and storage activities for their marketing affiliates to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Additionally, pipelines provide 24-hour electronic access of this information to any interested party. The information is also used by nonaffiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for formal proceedings following the filing of a compliant. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 161.3 and 250.16.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden house per response (3)	Total annual burden hours (1)×(2)×(3) (hours)
60	1	*58.3	3,500.

*Rounded.

The estimated total cost to respondents is $171,059, (3,500 hours divided by 2,087 hours per year employee times $102,000 per year per average employee=$171,059).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23892 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RM96–14–001, RP96–379–000]

Secondary Market Transactions on Interstate Natural Gas Pipelines, Arizona Public Service Company; Notice of Application of Arizona Public Service Company to Participate in Pilot Program

September 12, 1996.

Take notice that on September 3, 1996, Arizona Public Service Company submitted for filing an application for authorization to be included in the Commission's proposed pilot program related to the Secondary Market Transactions on Interstate Natural Gas Pipelines rulemaking in Docket No. RM96–14–000.

Any person desiring to comment on or to protest said application should file a petition 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 385.214). All such comments interventions and protest must be filed on or before October 4, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23841 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–4–000]

Granite State Gas Transmission, Inc.; Notice of Change in Annual Charge Adjustment

September 12, 1996.

Take notice that on September 9, 1996, Granite State Transmission, Inc., (Granite State) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effective on October 1, 1996:

Seventh Revised Sheet No. 21
Eighth Revised Sheet No. 22
Seventh Revised Sheet No. 23

According to Granite State, the revised tariff sheets are submitted to reflect the Annual Charge Adjustment authorized for the 1997 fiscal year in its transportation rate schedules.

Granite State further states that copies of its filing have been mailed to its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or 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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but, will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23845 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

Growth Unlimited Investments, Inc.; Notice of Issuance of Order

[Docket No. ER96–1774–000]

September 13, 1996.

Growth Unlimited Investments, Inc. (GUII) submitted for filing a rate schedule under which GUII will engage in wholesale electric power and energy transactions as a marketer. GUII also requested waiver of various Commission regulations. In particular, GUII requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by GUII.

On August 29, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GUII 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 385.214).

Absent a request for hearing within this period, GUII is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GUII's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 30, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23893 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–244–003]

Koch Gateway Pipeline Company; Notice of Compliance Filing

September 12, 1996.

Take notice that on September 9, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective June 22, 1996:

Substitute First Revised Sheet No. 3701
2nd Substitute First Revised Sheet No. 3702

Koch states that these revised tariff sheets are filed to comply with the Commission's Letter Order issued August 30, 1996 in Docket No. RP96–244–001. As directed, Koch revised the tariff sheets to reflect only those changes required by the June 21, 1996 Order in this proceeding.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23843 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–291–001]

Mid Louisiana Gas Company; Notice of Compliance Filing

September 12, 1996.

Take notice that on September 9, 1996, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective September 1, 1996.

Mid Louisiana asserts that the purpose of this filing is to comply with the Commission's order issued August 23, 1996 in Docket No. RP 96–291–000.

Mid Louisiana states that the filing is tendered in order to revise the provisions of Mid Louisiana's tariff with regard to various services by deleting previously submitted references to the sale of gas and associated demand charges from the rates of Mid Louisiana's NNS Rate Schedule and to correct certain clerical incongruities resulting from Mid Louisiana's original submission of tariff sheets in this docket. Additionally, Mid Louisiana has included certain tariff sheets in which errors attributable to clerical oversights were noted subsequent to the original submission and prior to the submission of this compliance filing.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of 154.203(b), Compliance Filings and 154.207, Notice Requirements, as well as any other requirement of the Regulations in order to permit the tendered tariff sheets to become effective September 1, 1996, as submitted.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23844 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–15–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1996.

Take notice that on September 10, 1996, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996:

Seventh Revised Sheet No. 4
Seventh Revised Sheet No. 4A

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states that the filing is being made in accordance with Section 22 of the General Terms and Conditions of Mid Louisiana's FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23846 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2580–000]

NUI Energy Brokers, Inc.; Notice of Issuance of Order

September 13, 1996.

NUI Energy Brokers, Inc. (NUI) submitted for filing a rate schedule under which NUI will engage in wholesale electric power and energy transactions as a marketer. NUI also requested waiver of various Commission regulations. In particular, NUI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NUI.

On August 29, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NUI 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 385.214).

Absent a request for hearing within this period, NUI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NUI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 30, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch,

888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23894 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RM96–14–001, RP96–382–000]

Secondary Market Transactions on Interstate Natural Gas Pipeline, Orange and Rockland Utilities Inc.; Notice of Application of Orange and Rockland Utilities Inc. To Participate in Pilot Program

September 12, 1996.

Take notice that on September 9, 1996, Orange and Rockland Utilities, Inc., submitted for filing an application for authorization to be included in the Commission's proposed pilot program related to the Secondary Market Transactions on Interstate Natural Gas Pipelines rulemaking in Docket No. RM96–14–000.

Any person desiring to comment on or to protest said application should file a petition 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 385.214). All such comments, interventions and protest must be filed on or before October 4, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23842 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–47–010]

Texas Gas Transmission Corporation; Notice of Filing

September 12, 1996.

Take notice that on September 6, 1996, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct in response to an August 7, 1996 order requiring Texas Gas to submit a report describing how it plans to maintain the confidentiality of transportation information. 76 FERC ¶ 61,188 (1996).

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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before September 27, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23838 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RM96–14–001, RP96–360–000]

Secondary Market Transactions on Interstate Natural Gas Pipelines, Transcontinental Gas Pipe Line Corporation; Notice of Application of Transcontinental Gas Pipe Line Corporation To Participate in Pilot Program

September 12, 1996.

Take notice that on August 30, 1996, Transcontinental Gas Pipe Line Corporation submitted for filing an application for authorization to be included in the Commission's proposed pilot program related to the Secondary Market Transactions on Interstate Natural Gas Pipelines rulemaking in Docket No. RM96–14–000.

Any person desiring to comment on or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 395.214). All such comments, interventions and protest must be filed on or before October 4, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23840 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–49–001]

Williston Basin Interstate Pipeline Company; Notice of Annual Charge Adjustment Filing

September 12, 1996.

Take notice that on September 9, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets, to become effective October 1, 1996:

Second Revised Volume No. 1

Sub Twentieth Revised Sheet No. 15
Sub Twenty-third Revised Sheet No. 16
Sub Twentieth Revised Sheet No. 18
Sub Seventeenth Revised Sheet No. 21

Original Volume No. 2

Sub Sixty-fourth Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Annual Charge Adjustment (ACA) unit charge amount filed by Williston Basin on August 30, 1996 pursuant instructions from FERC Staff. The filing incorporates the ACA surcharge of .203 cents per Mcf (.189 cents per dkt on the Williston Basin system), a decrease of .0300 cents per Mcf from the current amount.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23847 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–76–001]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 12, 1996.

Take notice that on September 9, 1996, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective October 1, 1996:

First Revised Volume No. 1

Substitute Fifth Revised Sheet No. 5

Second Revised Volume No. 2

Substitute Fifth Revised Sheet No. 4

WIC states that the filing is being filed to correct input and format errors contained in its September 3, 1996 ACA filing.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23848 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–93–000, et al.]

Liberty Power Ltd., et al.; Electric Rate and Corporate Regulation Filings

September 12, 1996.

Take notice that the following filings have been made with the Commission:

1. Liberty Power Ltd.

[Docket No. EG96–93–000]

On September 4, 1996, Liberty Power Ltd., 16, Street No. 84, G/6–4, Islamabad, Pakistan, filed with the Federal Energy Regulatory Commission an application for determination 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 will be engaged directly and exclusively in owning and operating an eligible 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 transmission grid of the Water and Power Development Authority.

Comment date: October 2, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Wisconsin Public Service Corporation

[Docket No. ER96–1702–000]

Take notice that on September 3, 1996, Wisconsin Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: September 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER96–2334–000]

Take notice that on August 27, 1996, Cinergy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 26, 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. 96–23891 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2913–000, et al.]

Southern Company Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 11, 1996.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER96–2913–000]

Take notice that on September 5, 1996, Southern Company Services, Inc. (SCS), 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 seven (7) service agreements between SCS, as agent of the Southern Companies, and (i) Questar Energy Trading Company, (ii) Progress Power Marketing, Inc., (iii) Carolina Power and Light Company, (iv) SCANA Energy Marketing, Inc., (v) Wisconsin Power and Light, (vi) South Carolina Electric and Gas Company, and (vii) Illinova Power Marketing, Inc. for non-firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Working Assets Green Power, Inc.

[Docket No. ER96–2914–000]

Take notice that on September 5, 1996, Working Assets Green Power, Inc. (Working Assets), tendered for filing pursuant to Section 205, 18 CFR 385.205 an application for a blanket certificate and various other authorizations and waivers from the Commission, including approval of its FERC Electric Rate Schedule No. 1 to be effective upon acceptance by the Commission for Filing.

Working Assets proposes to engage in the wholesale electric power market as a broker and marketer buying and selling electric power. Specifically, Working Assets proposes to purchase electric energy and transmission capacity from public utilities and other power producers, and resell such energy and capacity to others. Working Assets anticipates that such transactions will

vary in duration and quality of service relative to interruptability. In addition, the price it proposes to charge for its services shall be negotiated, market-based rates. Working Assets states that it is not affiliated with any other company providing services to the power industry, nor does it own or operate electric power generation, transmission, or distribution facilities, and therefore, it has no market power in the electric power market.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER96–2915–000]

Take notice that on September 5, 1996, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between IGI Resources, Inc. and Idaho Power Company.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER96–2916–000]

Take notice that on September 5, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated July 17, 1996 with Eastex Power Marketing, Inc. (Eastex) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Eastex as an eligible customer under the Tariff.

PP&L requests an effective date of August 20, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Eastex and to the Pennsylvania Public Utility Commission.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER96–2917–000]

Take notice that on September 5, 1996, Pennsylvania Power & Light Company (PP&L) filed a Service Agreement dated July 17, 1996 with Williams Energy Services Company (WESCO) under PP&L's FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds WESCO as an eligible customer under the Tariff.

PP&L requests an effective date of September 1, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to WESCO and to the Pennsylvania Public Utility Commission.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96–2918–000]

Take notice that on September 5, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as GPU Energy), filed a Service Agreement between GPU and Pennsylvania Power & Light Company (PPL) dated August 28, 1996. This Service Agreement specifies that PPL has agreed to the rates, terms and conditions of the GPU Companies' open access transmission tariff filed on July 9, 1996 in Docket No. OA96–114–000.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date August 28, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on PPL.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Lykes-Duke/Louis Dreyfus, Ltd.

[Docket No. ER96–2919–000]

Take notice that on September 5, 1996, Lykes-Duke/Louis Dreyfus, Ltd. (the Applicant), tendered for filing its FERC Electric Rate Schedule No. 1 to be effective November 4, 1996 and request that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER96–2920–000]

Take notice that on September 5, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing one executed and three unexecuted service agreements for non-firm point to point transmission service under the open access transmission tariff it filed in Docket No. OA96–52–000. Virginia Power requests that the Commission waive its regulations to the extent necessary to permit the service agreements to become effective as of the date that service commenced. Virginia Power will substitute executed service agreements once signatures are obtained.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. PanEnergy Trading and Market Services, L.L.C.

[Docket No. ER96–2921–000]

Take notice that on September 5, 1996, PanEnergy Trading and Market Services, L.L.C. (the Applicant), a joint venture limited liability company, filed a petition with the Federal Energy Regulatory Commission (Commission) for waivers, blanket approvals, and an order approving an initial rate schedule designated as PanEnergy Trading and Market Services, L.L.C., Rate Schedule No. 1, to be effective as of October 1, 1996, pursuant to Sections 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 385.207

The Applicant is a joint venture limited liability company in which PTMSI Management, Inc. owns a 60% equity interest and Mobil Natural Gas Inc. owns a 40% equity interest. On October 1, 1996, the Applicant intends to begin in the business of buying and selling electric energy and capacity at wholesale on transmission systems across the domestic electric transmission grid. The rates charged by the Applicant for wholesale of energy and capacity will be mutually agreed upon by the parties to each particular transaction.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER96–2922–000]

Take notice that on September 5, 1996, Tampa Electric Company (Tampa Electric), tendered for filing Service Schedule D under its Agreement for Interchange Service with the City of Lakeland, Florida (Lakeland) and a Letter of Commitment under Service Schedule D providing for the sale of capacity and energy to Lakeland.

Tampa Electric requests that the Service Schedule D and Letter of Commitment be made effective on November 4, 1996.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER96–2923–000]

Take notice that on September 4, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) an executed Service Agreement for Non-Firm Point-to-Point Transmission Service and an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with the Bonneville Power Administration.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective August 12, 1996.

A copy of this filing was caused to be served upon the Bonneville Power Administration as noted in the filing letter.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER96–2924–000]

Take notice that on September 4, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff, (Docket No. OA96–137–000) executed Service Agreements for Non-firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service with the Utility Trade Corp.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective August 20, 1996.

A copy of this filing was caused to be served upon the Utility Trade Corp. as noted in the filing letter.

Comment date: September 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. El Paso Electric Company

[Docket No. ES96–44–000]

Take notice that on September 9, 1996, El Paso Electric Company filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 90,000 shares of its Series A Preferred Stock to be used to make a payment in lieu of a cash dividend on its outstanding Preferred Stock.

Comment date: October 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Michigan Power Limited Partnership

[Docket No. QF88–441–002]

On August 28, 1996, Michigan Power Limited Partnership of 2500 West City Boulevard, Suite 1700, Houston, Texas 77042, submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fueled cogeneration facility is located in Mason County, Michigan. The Commission previously certified the facility as a 125.5 MW cogeneration facility. The facility consists of a combustion turbine generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by Dow Chemical USA (Dow) for the production of calcium chloride and magnesium. Power from the facility is sold to the Consumers Power Company (Consumers). Dow purchases all of its power needs directly from Consumers. According to the applicant, the recertification is requested to report the addition of an alternate supply circuit from Consumers to Dow through the facility. The alternate supply circuit will be used by Consumers in the event the primary supply circuit is interrupted.

Any person who wishes to be heard or to object to granting qualifying status 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. A motion or protest must be filed within 15 days after the date of publication of this notice and must be served on the applicant. 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. A person who wishes to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

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. 96–23895 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM96–1–000]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice Clarifying Procedures for Filing of Pro Forma Tariff Sheets

September 12, 1996.

The Commission's July 17, 1996 order in this docket,[1] requires pipelines to file *pro forma* tariff sheets to comply with the business practice standards adopted by the Commission. This notice clarifies the procedures pipelines should follow in making the *pro forma* filings.

To reduce the burden required to convert the *pro forma* tariff sheets to final sheets, the *pro forma* sheets should be filed as if they are proposed revisions of sheets in the existing tariff volume (with changes identified as provided in Section 154.201 of the Commission's regulations) with the words ''Pro Forma'' before the volume name, *e.g.*, Fourth Revised Sheet No. 150, FERC Gas Tariff, Pro Forma Third Revised Volume No. 1. For the electronically filed tariff sheets, ''Pro Forma'' should be inserted at the beginning of the name field (VolumeID) in the Tariff Volume Record, i.e., the TF02 record. When the pipeline files the final tariff sheets, it need only remove the phrase *pro forma* for any unchanged sheets.

In addition, Section 154.7 of the Commission's regulations requires pipelines to include in their filing a statement of the nature, the reasons, and the basis of the filing that includes a detailed explanation of the need for each tariff change. To ease the processing of these filings by the Commission and other parties, pipelines should fulfill this requirement by including a table showing the Gas Industry Standards Board (GISB) standard, the complying *pro forma* tariff

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC. Stats. & Regs. Regulations Preambles § 31,039 (Jul. 17, 1996).

sheet number, and an explanatory statement, if necessary, describing any reasons for deviations from or changes to each GISB standard.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–23839 Filed 9–17–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals; Week of June 3 Through June 7, 1996

During the week of June 3 through June 7 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 9, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Association of Public Agency Customers, 6/6/96, VFA–0162

The Association of Public Agency Customers (Appellant) filed an Appeal of a Determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of Information Act (FOIA) concerning documents related to power service contracts. In its Determination, Bonneville Power Administration (BPA) released 26 pages and withheld approximately 1,500 additional pages from the Appellant under Exemptions 4 and 5 of the FOIA. The Appellant appealed this withholding and challenged the amount of search and review fees it had been assessed. The Office of Hearings and Appeals (OHA) first determined that the amount of time spent searching for and reviewing documents was reasonable, and that it was proper to have relatively high-paid employees conduct this work. However, the OHA found that BPA had incorrectly charged the Appellant the cost of the photocopier operator's time. The OHA also concluded that Exemption 4 had been applied correctly, because if some of the withheld material was released, future production capacities of two BPA customers would be easily determined. Finally, the OHA found that the other withheld documents were correctly protected by the deliberative process and attorney-client privileges of Exemption 5. Accordingly, the OHA ordered BPA to reduce its fees to the Appellant by the amount of the incorrect charges, but denied the Appeal in all other respects.

Dorothy M. Bell, 6/7/96, VFA–0163

The Department of Energy (DOE) issued a Decision and Order denying a Freedom of Information Act Appeal that was filed by Dorothy M. Bell. In her Appeal, Ms. Bell contested the adequacy of the search for documents responsive to her request. In the Decision, the DOE found that the search conducted for responsive documents was adequate.

Todd M. Clark, 6/6/96, VFA–0164

Todd M. Clark filed an Appeal from a determination issued to him on April 8, 1996, by the Freedom of Information Act Contact of the Office of Environmental Management of the Department of Energy (DOE). In that determination, the FOIA Contact granted a request for information filed by Mr. Clark under the Freedom of Information Act (FOIA). In his Appeal, the appellant contended that additional responsive information may exist. In considering the Appeal, the DOE confirmed that the FOIA Contact followed procedures reasonably calculated to uncover any responsive information. Accordingly, the DOE denied Mr. Clark's request.

Refund Application

Atlantic Richfield Company/Jefferson ARCO, Albert's ARCO, 6/7/96, RF304–15501, RF304–15502

The DOE found that duplicate applications were filed in the ARCO special refund proceeding for two retail outlets owned by Albert Peiper. The DOE determined that Mr. Peiper's signature was forged on one set of applications and on the refund checks issued based upon those applications. The forged applications carried the address of Mr. Peiper's former wife, and the refund checks were deposited into her account. Accordingly, the refunds granted based upon the forged applications were rescinded, and Mr. Peiper's former wife was ordered to repay the amount received.

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.

Clairmont Transfer Company	RC272–342	06/03/96
Clairmont Transfer Company	RK272–3437	
Gulf Oil Corporation/Clock Tire Mart	RF300–16852	06/03/96
Gulf Oil Corporation/Dearman Oil Co. et al	RF300–13591	06/06/96
Gulf Oil Corporation/Jones Fuel & Heating Co	RF300–15144	06/07/96
Gulf Oil Corporation/WMG, Inc	RF300–21694	06/03/96
Land Paving et al	RF272–96134	06/06/96
Riedel International	RF272–69843	06/07/96
Riedel International	RD272–69843	
State of Tennessee	RR272–207	06/03/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Allegheny Development Corporation	RG272–970
Arledge Kelly Hay co	RF272–94736
Denormandie Towel & Linen Supply	RF272–89976

Name	Case No.
Foia Group, Inc	VFA–0165
Fort Recovery Equity Exc	RG272–774
Honeywell, Inc	VFA–0149
Minden Oil, Inc	RF300–19560
Pomeroy Grange Supply Co., Inc	RG272–773
Ray Bell	RG272–971
Scotty's Contracting and Stone	RG272–771

[FR Doc. 96–23885 Filed 9–17–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders From the Week of November 6 Through November 10, 1995

During the week of November 6 through November 10, 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, S.W., Washington, D.C. 20585, 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 6, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Long Island Lighting Company, 11/8/95, VFA–0003

The Office of Hearings and Appeals denied an appeal filed by the Long Island Lighting Company under 10 C.F.R. Part 766. LILCO had claimed that the DOE erroneously determined its special assessment for payment into the Uranium Decontamination and Decommissioning Fund established under the Energy Policy Act of 1992. In its Appeal, LILCO challenged DOE's accounting of a series of secondary market transactions in which LILCO had divested itself of enriched uranium fuel which it no longer needed due to the closing of its Shoreham New York reactor plant.

William H. Payne, 11/8/95, VFA–0091

William H. Payne filed an Appeal from a determination issued by the Office of Intergovernmental and External Affairs of the Department of Energy's Albuquerque Field Office (DOE/AL), in response to a request he submitted for information under the Freedom of Information Act (FOIA). In his request, Payne sought the names and dates of employment of all retired military personnel who were hired by Los Alamos National Laboratory between October 1, 1979, and September 12, 1995. In considering the Appeal, the DOE found that: (i) the University of California, a DOE contractor that possessed the records sought by Payne, is not an ''agency'' as defined in the FOIA; (ii) the records had not been obtained by the DOE and were not in the agency's control at the time of the appellant's request; and (iii) under the contract between the DOE and the University, the records requested by Payne were not agency records subject to the FOIA. Accordingly, the DOE found that the records sought were not ''agency records,'' and the Appeal was denied.

Implementation of Special Refund Procedures

Malcolm M. Turner, Revere Petroleum Corp., Granite Petroleum Corp., Dalco Petroleum Corp., 11/6/95, VEF–0013, VEF–0014, VEF–0015, VEF–0016

The DOE implemented procedures for the distribution of $4,567,399.72 plus accrued interest in alleged overcharges obtained from Malcolm Turner, Revere Petroleum Corporation, Granite Petroleum Corporation and Delco Petroleum Corporation. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE has determined that these monies will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharge. Under that policy, 20 percent will be divided among injured purchasers of refined products, 40 percent to the federal government, and 40 percent to the states.

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/Alfred Lowry & Bros et al	RF304–12892	11/08/95

Dismissed

The following submissions were dismissed:

Name	Case No.
Alabama Electric Cooperative, Inc.	RG272–00887
Albuquerque Operations Office	VSO–0062
Clay Hyder Trucking Lines	RF272–78171
Commercial Carrier Corporation	RF272–78169
Jim Beam Brands Co.	RF272–98777

[FR Doc. 96–23886 Filed 9–17–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders From the Week of November 13 Through November 17, 1995

During the week of November 13 through November 17, 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, DC 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 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeal

Knolls Action Project, 11/13/95, VFA–0093

Knolls Action Project (KAP) filed an Appeal from a determination issued to it by the Office of Naval Reactors (NR) of the Department of Energy (DOE). In its Appeal, KAP asserted that NR improperly failed to grant it a fee waiver regarding documents it requested pursuant to four Freedom of Information Act (FOIA) Requests it submitted. In its Requests, KAP requested various documents pertaining to the shipment and management of spent nuclear fuels from U.S. Naval vessels and that it be granted a fee waiver for the costs associated with the processing of its Requests. In its determination letter, NR denied KAP's fee waiver Request. In its Appeal, KAP argued that it fully met each of the requirements for a fee waiver. After a *de novo* review, the DOE determined that KAP was eligible for a fee waiver regarding certain portions of one of its FOIA Requests and was properly denied a fee waiver regarding the remainder of its Requests.

Personnel Security Hearing

Albuquerque Operations Office, 11/14/95, VSA–0023

Upon review, the Director, Office of Hearings and Appeals, concurred with the Hearing Officer's recommendation in Case No. VSA–0023 that access authorization not be restored to the appellant employee due to his use of marijuana and subsequent concealment of a history drug use. The employee claimed that 1) he was not notified of the results of a drug test; 2) that the drug test violated provisions of the Drug Free Workplace Act; and 3) that his concealment of drug use was due to immaturity or poor memory. The Director found that the employee had failed to mitigate valid security concerns. The Director also denied a motion for discovery of ethnicity of persons subject to administrative review by the Department of Energy.

Refund Application

Maritime Overseas Corporation, 11/14/95, RF272–97921

The DOE issued a Decision and Order concerning one Application for Refund in the Subpart V crude oil overcharge refund proceeding. The refund application was filed by the Maritime Overseas Corporation. The DOE determined that the Maritime Overseas Corporation was not entitled to a refund since it had filed a Rail and Water Transporters Escrow Settlement Claim Form and Waiver. In that filing, the Maritime Overseas Corporation had requested a Stripper Well refund from the Rail and Water Transporters escrow, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the DOE denied the Application for Refund.

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.

Axtell-Bern Summerfield Schls. et al	RF272–96238	11/14/95
Bear River Valley Coop. et al	RF272–97054	11/14/95
Ferraro Transportation Co. Inc et al	RF272–89202	11/14/95
Gulf Oil Corporation/The Kiesel Co.	RF300–16954	11/14/95
Joed, Inc.	RF300–16973	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.M. Devencenzi	RF272–98261
Bacon County, GA	RF272–86198
Gordon Transport, Inc.	RF300–12748
Hartnell Plaza Texaco	RF321–20554
Idaho Operations Office	VSO–0058
Phoenix Steel Corp.	RF272–92152
Victor B. Skaar	VFA–0012
Warwick Public Schools	RF272–97913
Watonga, OK	RF272–86205

[FR Doc. 96–23887 Filed 9–17–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of February 26 Through March 1, 1996

During the week of February 26 through March 1, 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, DC 20585, 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 6, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Keith E. Loomis, 2/5/96, VFA–0125

The DOE denied a Freedom of Information Act Appeal filed by Keith E. Loomis (Loomis). Loomis appealed the Office of Naval Reactors' (ONR) withholding of information under Exemption 6. OHA found that Exemption 6 was properly applied.

Nathaniel Hendricks, 2/29/96, VFA–0129

Nathaniel Hendricks filed a Motion for Reconsideration of a Decision and Order issued to him by the Department of Energy that the remanded Appellant's Freedom of Information Act request to the DOE's Office of Environment, Safety and Health (DOE/EH). In the reconsideration Motion, the Appellant presented new material that required a further search by the Chicago Operations Office. The DOE granted the Motion and remanded the matter to the Chicago Operations Office for further action.

Personnel Security Hearing

Oakland Operation Office, 2/26/96, VSO–0072

A Hearing Officer of the Office of Hearings and Appeals issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710. The Hearing Officer found that the derogatory information presented under 10 C.F.R. § 710.8(1) established that the individual misappropriated government property (a drill and some computer parts) and that he offered an explanation to a security guard concerning the drill that was not truthful. The Hearing Officer found that the individual presented sufficient evidence to mitigate this derogatory information. Specifically, the Hearing Officer found that the individual had demonstrated that he intended only to briefly borrow the drill, and that he had removed the computer parts from the laboratory for a legitimate government purpose. The Hearing Officer also found that the individual had relied on a perceived tolerance by the laboratory for the borrowing of property when he failed to obtain proper authorization for the off site use of these articles. The Hearing Officer found that the individual's untruthful statement to the security guard was mitigated by the individual's excitement, fatigue, and mental confusion at the time the statement was made. Finally, the Hearing Officer found that the individual had demonstrated an ability and willingness to comply fully with the requirements of laboratory policy regarding off site use laboratory property subsequent to these events. Accordingly, the Hearing Officer concluded that the individual's access authorization should be restored.

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.

AMERICAN ORIGINAL CORPORATION/BORDEN, INC.	RK272–3239	02/27/96
ARAVA NATURAL RESOURCES	RK272–2715	02/27/96
ATLANTIC RICHFIELD COMPANY/SOUTH BAY PLAZA CAR WASH ET AL	RF304–13347	02/29/96
CAROLINA AIRCRAFT, INC. ET AL	RF272–90648	02/26/96
DADE COUNTY PUBLIC SCHOOLS DEPARTMENT OF TRANSPORTATION	RJ272–00007	02/27/96
DOWNEAST AIRLINES, INC. ET AL	RF272–97951	02/27/96
EARLE M. JORGENSEN COMPANY	RR272–227	02/26/96
ETHEL GOLDHAHN ET AL	RK272–01101	02/27/96
GULF OIL CORPORATION/NEICE'S GULF ET AL	RF300–16632	02/26/96
INTERNATIONAL FLAVORS & FRAGRANCES	RR272–211	02/26/96
INTERNATIONAL FLAVORS & FRAGRANCES	RD272–14036	
MEGALOPOLIS PROPERTY ASSOCIATION ET AL	RF272–78604	02/29/96
SHARON STEEL CORPORATION	RC272–334	02/26/96
VILLAGE OF HAZEL CREST ET AL	RK272–2850	02/26/96
WILLIAM M. HART ET AL	RK272–2689	02/26/96

Dismissals

The following submissions were dismissed:

Name	Case No
AIR PARK ASSOCIATES	RF300–20370
ALASKA COASTAL AIRLINES	RF272–97991
DICKMAN AVIATION SERVICES, INC	RF272–97998
ED'S GULF	RF300–13495
ED'S GULF	RF300–13043
GOVERNMENT ACCOUNTABILITY PROJECT	VFA–0134
JOHN C. MANCHESTER, INC.	RF300–20307
NEW YORK TIMES	RF272–78117
PROVIDENCE JOURNAL CO.	RF272–78127
TUCKER OIL CO.	RF304–15340

Name	Case No
VIC'S MONTEREY ARCO	RF304–15405

[FR Doc. 96–23888 Filed 9–17–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of May 13 Through May 17, 1996

During the week of May 13 through May 17, 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 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Glen M. Jameson, 5/13/96, VFA–0147

Glen M. Jameson filed an Appeal from a determination issued to him on March 5, 1996, by the DOE's Oak Ridge Operations Office (Oak Ridge) in response to a request for information that Mr. Jameson submitted under the Freedom of Information Act (FOIA). In that determination, Oak Ridge released the documents Mr. Jameson requested, but withheld portions on the basis that they were exempt from disclosure pursuant to Exemption 4 of the FOIA. Mr. Jameson argued that (i) PAI Corporation, whose contract and invoices he was requesting, should not have been permitted to have any input in the response to his request; (ii) the contract is not a prospective procurement; (iii) DOE procurement has been greatly curtailed, therefore, PAI is winding down and does not have a competitive advantage to be protected; (iv) he does not work in or with anybody in the federal contracting arena, and is in no position to divulge the information to any of PAI's competitors; and (v) the information that has been withheld is not privileged or confidential. The DOE determined that the withheld information was exempt from disclosure under Exemption 4, because the information was privileged or confidential. Furthermore, the DOE indicated that (i) PAI's opportunity to comment on the releasability of the requested information was required by Executive Order No. 12,600, (ii) Mr. Jameson's identity and whether he works in the contracting arena are irrelevant and (iii) even though more information may be released after a contract is awarded, the DOE must consider whether Exemption 4 applies. Accordingly, the Appeal was denied.

James Minter, 5/16/96, VFA–0153

On April 19, 1996, James Minter filed an Appeal from a determination issued to him on April 3, 1996, by the Director of the Office of Public Affairs of the (DOE's) Albuquerque Operations Office. In that determination, the Director partially denied a request for information filed by Mr. Minter under the Freedom of Information Act (FOIA). In his Appeal, Mr. Minter contends that additional responsive information may exist. In considering the Appeal, the DOE confirmed that the Director followed procedures reasonably calculated to uncover any responsive information. Accordingly, the Appeal was denied.

Martha Julian, 5/14/96, VFA–0121

Martha Julian filed an Appeal from a determination issued to her daughter, Lisa Doyle, by the DOE's Albuquerque Operations Office, in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Albuquerque Operations Office performed an adequate search for radiation and other records of Mrs. Julian's father who worked at the Sandia Laboratory from 1951 to his death in 1958. Accordingly, the Appeal was denied.

Personnel Security Appeal

Albuquerque Operations Office, 5/17/96, VSA–0051

An individual whose access authorization was suspended filed a Request for Review of a DOE Hearing Officer's recommendation against restoration of the access authorization. The individual's access authorization was suspended by the DOE's Albuquerque Operations Office upon its receipt of derogatory information indicating that the individual had a drug test that was positive for the use of marijuana. The Hearing Officer rejected the individual's position that the positive drug test was caused by inhaling second hand marijuana smoke in a night club. In the request for review, the individual stated that the Hearing Officer did not give proper weight to the testimony of an expert witness, who stated that it was possible for the individual to have a positive drug test based on passive inhalation of marijuana. In his Opinion, the Director of the Office of Hearings and Appeals found that even if it is theoretically possible to have a positive drug test through passive inhalation, it was proper for the Hearing Officer to require corroborating evidence showing that the positive drug test in this case resulted from second hand marijuana smoke. Accordingly, the Director did not recommend that the individual access authorization be restored.

Whistleblower Proceeding

Daniel L. Holsinger K-Ray Security, Inc., 5/16/95, VWA–0005; VWA–0009

Daniel L. Holsinger filed a whistleblower complaint against Watkins Security Agency, Inc. (WSA) in which he alleged that the contractor retaliated against him for making disclosures concerning possible thefts of DOE property by another WSA employee at the DOE's Morgantown Energy Technology Center. After investigating the complaint, the Office of Contractor Employee Protection (OCEP) found that Holsinger had made a protected disclosure and that thereafter the contractor had retaliated against him by suspending him and by terminating his employment as a part-time security guard. At the same time, OCEP found that Holsinger had not shown that WSA had retaliated against him with regard to two other disciplinary actions. OCEP proposed that WSA provide Holsinger with lost pay and legal fees and that the current contractor, K-Ray Security, Inc. (K-Ray), be required to reinstate Holsinger to his former position as a security guard.

WSA, K-Ray and Holsinger all requested a hearing to challenge these findings and conclusions.

Prior to the hearing, Holsinger and WSA entered into a monetary settlement concerning Holsinger's claims against WSA. As a result, WSA did not participate in the hearing and was later dismissed as a party to the proceeding, and Holsinger dropped his objections to the findings in OCEP's Report and Proposed Disposition. The hearing focused on the issue of Holsinger's reinstatement by K-Ray.

The OHA Hearing Officer found that a violation of 10 C.F.R. § 708.5 had occurred. Specifically, he found that Holsinger had proven by a preponderance of the evidence that he engaged in protected activity under 10 C.F.R. Part 708 and that this activity was a contributing factor to his suspension and his dismissal from employment by WSA. He also found that WSA and K-Ray had failed to prove by clear and convincing evidence that WSA would have taken these adverse personnel actions absent Holsinger's protected activity. The Hearing Officer evaluated the arguments presented by K-Ray and Holsinger and concluded that reinstatement of Holsinger by K-Ray was a necessary and appropriate action to effect full relief for Holsinger. He therefore ordered K-Ray to reinstate Holsinger.

Implementation of Special Refund Procedures

Gil-Mc Oil Corporation, et al., 5/16/96, LEF–0054 ET AL.

The DOE issued a Decision and Order implementing procedures for the distribution of $1,140,553 (plus accrued interest) obtained from Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, and Dane Energy Company. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of crude oil. The DOE determined that these monies will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27,899 (August 4, 1986). Under that policy, 20% will be reserved for injured purchasers of refined products, 40% will be distributed to the federal government, and 40% of the states.

Texas American Oil Corp., 5/14/96, VEF–0019

The DOE issued a Decision and Order implementing procedures for disbursement of $48,307.13 in crude oil overcharge funds obtained from the bankrupt estate of Texas American Oil Corporation. The DOE ordered that these funds, plus accrued interest, be disbursed to individual claimants. The DOE determined that this allocation is required by the decision of the United States Court of Appeals for the Federal Circuit in *Texas American Oil Corp.* v. *DOE*, 44 F.3d 1557 (Fed. Cir. 1995) (en banc). In that case, the court held that the DOE's claim in the Texas American bankruptcy proceeding on behalf of individual claimants should have a higher priority than its claim on behalf of the states and federal government. Pursuant to that decision, the bankruptcy court distributed to the DOE an amount equivalent to 20 percent of its liquidated claim in the Texas American bankruptcy proceeding, since under the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986), a maximum of 20 per cent of the crude oil overcharge funds remitted to the DOE is reserved for injured purchasers of refined petroleum products.

Request for Exception

Jacobs Oil Company, 5/13/96 VEE–0021

Jacobs Oil Company filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' Jacobs argued that filing these surveys was time consuming and onerous. However, the DOE determined that Jacobs was not suffering a special hardship, inequity or unfair distribution of burdens. Accordingly, exception relief was denied.

Refund Application

State Escrow Distribution, 5/17/96, RF302–18

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $44,100,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

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.

BAYLY CORP.	RC272–0335	05/15/96
CITY OF NORTH EASTON ET AL	RF272–98102	05/15/96
CRUDE OIL SUPPLE REF DIST	RB272–00076	05/17/96
GULF OIL CORPORATION/EDDY GALLUCCI'S GULF	RF300–19982	05/16/96
IRENE VORA	RJ272–00008	05/17/96
MOTOR TRANSPORT CO. ET AL	RF272–78490	05/17/96
TOWNSEND BROS. ET AL	RK272–02405	05/16/96

Dismissals

The following submissions were dismissed:

Name	Case No.
ALBUQUERQUE OPERATIONS OFFICE	VSO–0086
CHESAPEAKE & OHIO RAILROAD	RF272–3439
CINTAS CORP.	RK272–3499
KONCZAL ENTERPRISES, INC.	RF304–15007

[FR Doc. 96–23889 Filed 9–17–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders; Week of June 17 Through June 21, 1996

During the week of June 17 through June 21, 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, 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 6, 1996

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

BURLIN MCKINNEY, 6/18/96, VFA–0168

Burlin McKinney sought under the Freedom of Information Act information concerning safety measures at the DOE's Y–12 plant. DOE found that the determination issued by the Oak Ridge Operations Office was inadequate. Accordingly, DOE remanded the matter to Oak Ridge with instructions to correct the determination's deficiencies.

GOVERNMENT ACCOUNTABILITY PROJECT, 6/17/96, VFA–0167

The Government Accountability Project (GAP) filed an Appeal from a FOIA determination issued to it by the Albuquerque Operations Office denying it a waiver of fees. The DOE determined that GAP was eligible for a fee waiver and granted GAP's Appeal.

LARSON ASSOCIATED, INC., 6/18/96, VFA–0103

Larson Associated, Inc., filed an Appeal from a denial by the Department of Energy's Oak Ridge Operations Office (DOE/OR) of a request for information which it had submitted under the Freedom of Information Act (FOIA). Larson sought a copy of a Community Involvement Proposal submitted to DOE/OR by Martin Marietta Corporation. DOE/OR withheld this document in its entirety pursuant to FOIA Exemption 4. In considering the Appeal, the DOE found that: (i) it is proper under the standards set forth by the federal courts to process FOIA requests on a ''first-in, first-out'' basis; (ii) the Manager of DOE/OR was the proper signatory of the determination; (iii) DOE/OR's determination that material should be withheld under Exemption 4 because its disclosure was likely to cause competitive harm to the submitter did not sufficiently state the reasons for believing such harm would result; and (iv) some portions of the documents can be released.

Accordingly, the Appeal was granted in part. The matter was remanded to DOE/OR for a new determination that would release information that was not protected from disclosure, and would adequately explain the reasons for withholding exempt information.

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.

BEAM'S ARCO	RG272–382	06/20/96
BOYD MILNER	RJ272–00013	06/19/96
LARRY MILNER	RJ272–00014	.....
CARL MINDELSON	RJ272–00016	.....
SARA MINDELSON	RJ272–00017	.....
DOROTHY HIGER	RJ272–00018	.....
CPC INTERNATIONAL, INC.	RJ272–15	06/21/96
PHILLIP MORRIS COMPANIES, INC.	RK272–3556	.....
CRUDE OIL SUPPLE REF DIST	RB272–00081	06/21/96
FALL RIVER FEEDLOTS, INC. ET AL	RK272–00030	06/20/96
GALESVILLE-ETTRICT SCHOOL DISTRICT ET AL	RF272–80678	06/18/96
GULF OIL CORPORATION/JAMES L. TURNBAUGH ET AL	RF300–20304	06/17/96
GULF OIL CORPORATION/ROUTE 40 WEST GULF	RF300–15030	06/19/96
SAN MATEO COUNTY REGIONAL OCCUPATIONAL PROGRAM ET AL	RF272–79174	06/18/96
TOWN OF HOPKINTON ET AL	RF272–95902	06/17/96

Dismissals

The following submissions were dismissed:

Name	Case No.
BERNARD MOTOR SUPPLY	RF304–15415
BIGGARD DRILLING	RG272–00384
CHARLES L. BAILEY	RF304–15430
DICK'S ARCO	RF304–15416
GEORGE E. BURKE	RF304–15467
GRIFFIN ARCO SERVICE	RF304–15449
HARLEM & CERMAK ARCO	RF304–15465
HILLTOP BASIC RESOURCES, INC.	RF272–97840
LIMA CENTRAL CATHOLIC HIGH SCHOOL	RF272–97801
MARVIN W. BROWN ARCO	RF304–15144
MOUNT GREYLOCK REGULAR SCHOOL DISTRICT	RF272–97800
PATRONS' MERCANTILE COOPERATIVE	RG272–00378

Name	Case No.
PYROFAX GAS CORP.	RF304–15468
ROMAN CATHOLIC ARCHBISHOP	RF272–97899
SKAGWAY AIR SERVICE	RF272–98026
SOUTHERN MARYLAND ELECTRIC CO-OP., INC.	RF272–95186
SOUTHERN MARYLAND ELECTRIC CO-OP., INC.	RF272–98075
SOUTHERN MARYLAND ELECTRIC COOP., INC.	RF272–95186
SOUTHERN MARYLAND ELECTRIC COOP., INC.	RF272–98075
SOUTHGATE ARCO	RF304–13759
STU-BROCK SERVICE INC.	RF304–15061
STUART PETER PARSELL	RF272–97734
T.H. MCCANN CORP.	RF304–15059
W.D. YOUNG OIL & SUPPLY	RF304–15337

[FR Doc. 96–23890 Filed 9–17–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44631; FRL–5395–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on cyclohexane (CAS No. 110–82–7). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for cyclohexane were submitted by the Cyclohexane Panel of the Chemical Manufacturers Association on behalf of the following test sponsors: Chevron Chemical Company, CITGO Refining & Chemicals Inc., E.I. du Pont de Nemours & Company, Huntsman Corporation, Koch Industries Inc., Phillips Petroleum Company, and Sun Company, Inc. These data were submitted pursuant to a TSCA section 4 enforceable consent agreement/order at 40 CFR 799.5000 and were received by EPA on August 19, 1996. The submission includes two final reports entitled (1) ''90-Day Inhalation Neurotoxicity Study with Cyclohexane in Rats,'' and (2) ''90-Day Inhalation Toxicity Study with Cyclohexane in Mice.'' Cyclohexane is found in a number of consumer products including spray paint and spray adhesives and is also available as a laboratory solvent.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44631). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects:

Environmental protection, Test data.

Dated: September 9, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–23904 Filed 9–17–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

September 12, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before November 18, 1996. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0288

Title: Special temporary authority.
Type of Review: Extension of existing collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 35.
Estimated Time Per Response: 4 hours.
Total Annual Burden: 140 hours (4 hours × 35 responses.)
Total Costs to Respondents: $4,410. (Filing fee for special temporary authority requests @ $125 per response. Postage and stationery costs @ $1 per response. $126 × 35 responses = $4,410).
Needs and Uses: 47 CFR 78.33 permits cable television relay station (CARS) operators to file informal requests for special temporary authority to install and operate equipment in a manner different than the way authorized in the station license. Special temporary authority may also be requested to conduct a field survey to determine necessary data in connection with the preparation of a formal application for installation of a radio system. Such authority may be granted to equipment suppliers and others who are not operators of cable television systems or other eligible systems, as well as to cable operators or other eligible system operators, to conduct equipment, program, service, and path tests. Data are used by Commission staff to ensure that granting such requests for special temporary authority will not cause interference to established stations.

OMB Approval Number: 3060–0310

Title: 76.12 Registration statement required.
Type of Review: Extension of existing collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 600.
Estimated Time Per Response: .25 hours.
Total Annual Burden: 150 hours (.25 hours × 600 responses.)
Total Costs to Respondents: $28,200. (Filing fee for registration statements @ $45 per response. Postage and stationery costs @ $2 per response. $47 × 600 responses = $28,200).
Needs and Uses: 47 CFR 76.12 requires that a registration statement be filed with the Commission before a system community unit shall be authorized to commence operation. A system community unit is a cable television system, or portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity.The data are used by Commission staff to maintain complete records regarding existing cable television system community units and to ensure compliance with Commission rules and regulations.

OMB Approval Number: 3060–0075

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or Low Power Television Station.
Type of Review: Extension of existing collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 655.
Estimated Time Per Response: 1–10 hours.
Total Annual Burden: 655.
Needs and Uses: Filing of the FCC Form 345 is required when apply for authority for assignment of license or permit, or for consent to transfer of control of corporate licensee or permittee for an FM or TV translator station, or low power TV station.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–23877 Filed 9–17–96; 8:45 am]
BILLING CODE 6712–01–P

Public Information Collection Approved by Office of Management and Budget

September 12, 1996

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission

OMB Control No.: 3060–0678

Expiration Date: 8/31/99.
Title: Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures.
Form No.: 312.
Estimated Annual Burden: 1,600 annual hour; average hours 2 per respondent; 800 respondents.
Description: In accordance with the Communication's Act, the information collection will be used by the Commission in evaluating U.S.-licensed earth stations applications requesting authority to operate with space stations licensed by other administrations. The information will be used to determine the legal technical, and financial ability of the non-U.S. licensed space station to serve the United States and will assist the Commission in determining whether such authorization is in the public interest.

OMB Control No.: 3060–0214

Expiration Date: 7/31/99.
Title: Local Public Inspection File of Commercial Stations—Section 73.3526.
Form No.: N/A.
Estimated Annual Burden: 2,101,640 total annual hours; average 10,215 commercial radio licensees recordkeepers @104 hours per respondent; 1,181 commercial TV licensees recordkeepers @130 hours per respondent; 1,181 commercial TV stations making must-carry retransmission consent elections at 5 hours per election statement to 1 hour for 50 cable systems per TV market.
Description: Section 73.3526 requires each licensee/permittee of a commercial AM, FM or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to the type of service and status. The data are used by the public and the Commission to evaluate information about the station's performance.

OMB Control No.: 3060–0571

Expiration Date: 7/31/99.
Title: Determination of Maximum Initial Permitted Rates for Regulated Cable Programming Services and Equipment.
Form No.: FCC 393.

Estimated Annual Burden: 3,020 hours (2,420 for operators + 600 for LFAs). For cable operators: we estimate approximately 80 FCC Form 393 filings will be made this year, 50% with the Commission and 50% with LFAs. We estimate that 25% of cable operators will contract out the burden of filing and that it will take 1 hour to coordinate information with those contractors. The remaining 75% of operators will employ in house staff to complete the application. 20 filings (25% contracted out)×1 hour=20 hours. 60 filings (75% in house)×40 hours=2,400 hours. Total burden for operators=2,420 hours. Average 1–40 hours per response; 80 respondents.

Description: The data are used by FCC staff and LFAs to determine whether cable rates in effect prior to May 15, 1994 for basic service, cable programming service and associated equipment are reasonable under FCC regulations. Cable operators use FCC Form 393 to submit their basic rate schedule to LFAs certified prior to May 15, 1994 or the FCC (in situations where the FCC has assumed jurisdiction). Cable operators also file FCC Form 393 with the FCC when responding to a complaint filed with the Commission about cable programming service rates and associated equipment in effect prior to May 15, 1994.

FCC Form 393 is a one-time only filing requirement for operators. Local franchise authority (''LFA'') certifications to regulate rates are not granted retroactively. Rate complaints are also not permitted to retroactively challenge rates in effect prior to May 15, 1994; therefore, no future entities will be impacted by this filing requirement. In fact, the Form 393 filing process is nearly exhausted. The only remaining entities impacted by this requirement are those initially required to file but have not yet done so, and those who filed incorrect or incomplete FCC Form 393s.

OMB Control No.: 3060–0343

Expiration Date: 10/31/96.

Title: Qualification for Satellite Space Station Licensees—Section 25.140.

Form: N/A.

Estimated Annual Burden: 2,500 total annual hours; average 10 hour per respondent; 25 responses.

Description: Section 25.140 information enables the Commission to determine whether applicants for space station authorization are financially, technically and legally qualified to construct, launch and operate their proposed systems and to determine whether the need for expansion or additional satellites is justified.

OMB Control No.: 3060–0383

Expiration Date: 11/30/96.

Title: Part 25 Satellite Communications.

Form: N/A.

Estimated Annual Burden: 3,750 total annual hours; average 1.5 hours per respondent; 2,500 respondents.

Description: The collections of information contained in Part 25 are used by the Commission staff in carrying out its duties as set forth in Section 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 308 and 309, to determine the technical, legal and other qualifications of an applicant to operate a station.

OMB Control No.: 3060–0713

Expiration Date: 7/31/99.

Title: Alternative Broadcast Inspection Program

Form: N/A

Estimated Annual Burden: 2,500 total annual hours; average 6 minutes per respondent; 50 respondents performing 50 inspections.

Description: The Commission is establishing a voluntary AIBP program where entities that conduct the ABIP inspection (usually state broadcast associations) will notify the Commission of the stations that have passed inspection. This will require entities to file a statement with their local FCC field office, by regular or electronic mail, that a given station within the field office's geographic district has passed an ABIP Inspection. The Commission will use the information to determine which stations are exempt for a two or three year period from random inspections conducted by the local FCC field office.

OMB Control No.: 3060–0543

Expiration Date: 7/31/99.

Title: Signal Booster Stations—Section 21.913.

Form: N/A.

Estimated Annual Burden: 300 total annual hours; average 30 minutes for a licensee to consult with an engineer who will prepare the certification in approximately 2 hours; 600 responses.

Description: Section 21.913(e) requires that applicants for MDS signal booster stations obtain written permission from each station whose signal is retransmitted. Section 21.913(g) permits licensees of MDS or ITFS stations to submit a certification demonstrating compliance with various components of Section 21.913 when they install a low power booster station without prior authorization. The data is used by FCC staff to verify that an applicant has permission to retransmit the signal of other licensees' stations and to ensure that a booster would not cause harmful interference.

OMB Control No.: 3060–0711

Expiration Date: 7/31/99.

Title: Implementation of Section 34(a)(1) of the Public Utility Holding Act of 1935, as amended by the Telecommunications Act of 1996.

Form: N/A.

Estimated Annual Burden: 150 total annual hours; average 10 hours per respondent; 15 responses.

Description: The information will be used by the Commission to determine whether persons satisfy the statutory criteria for ''exempt telecommunications company'' status. Without such information the Commission could not determine whether persons satisfied the requisite statutory criteria and therefore fulfill its responsibilities under section 34(a)(1) of PUHCA, as amended.

OMB Control No.: 3060–0004

Expiration Date: 11/30/96.

Title: Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation.

Form: N/A.

Estimated Annual Burden: 40,301 total annual hours; varies depending on the type of evaluation being performed. The estimate for each applicant using OET bulletin 65 is 1 hour per applicant. The number of evaluation range from 113–112,500.

Description: This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of major actions significantly affecting the quality of the human environment. The information will be used to determine whether environmental evaluation is sufficiently complete and in accordance with the Commission's Rules.

OMB Control No.: 3060–0110

Expiration Date: 8/31/99.

Title: Application for Renewal of License for AM, FM, TV, Translator or LPTV Station.

Form: FCC 303–S.

Estimated Annual Burden: 6,230 total annual hours; average 2– 5.5.hours per respondent; 4,658 responses.

Description: FCC 303–S is used in applying for renewal of license for an AM, FM, TV, FM/TV Translator and LPTV broadcast station. The dat is used by FCC to assure that necessary forms connected with renewal have been filed and that licensees continue to meet basic statutory requirements to remain licensees.

OMB Control No.: 3060–0700

Expiration Date: 8/31/99.
Title: Implementation of Section 302, of the Telecommunications Act of 1996, Open Video Systems.
Form: FCC 1275.
Estimated Annual Burden: 4,570 total annual hours; average 1–20 hours per respondent; 3,750 responses.
Description: This information collection is necessary to implement the statutory OVS provisions in the Telecommunications Act of 1996. The rulemaking established (a) how operators would notify video providers of intent to establish a system; (b) how the Commission would enforce rates and terms of carriage on such Open Video Systems; (c) how the Commission's must-carry, program access, sports exclusivity, and Equal Employment Opportunity provisions will apply to OVS operators; (d) how OVS operators would certify to the Commission compliance with Section 653 of the Telecommunications Act; and (e) how the Commission would institute dispute resolution process for OVS operators and program providers.

OMB Control No.: 3060–0733

Expiration Date: 10/31/96.
Title: Implementation of Section 302 of the Telecommunications Act of 1996.
Form: N/A.
Estimated Annual Burden: 13 total annual hours; average .5–5.5 hours per respondent; 14 responses.
Description: This information will be used by the Commission to ensure that all existing video dialtone operators have elected an option for the delivery of video programming services under Section 651. The filings will serve as an official record to verify that video dialtone operators are in compliance with the Commission's rules.

OMB Control No.: 3060–0392

Expiration Date: 2/28/97.
Title: Pole Attachment Complaint Procedures Sections 1.1401 through 1.1416.
Form: N/A.
Estimated Annual Burden: 449 total annual hours; average 1–25 hours per respondent; 83 responses.
Description: The Commission was required to establish rules to ensure that the rates, terms and conditions under which cable television system operators attach their hardware to utility poles are just and reasonable. Utilities shall provide a cable television system operator no less then 60 days written notice prior to (1) removal of facilities or termination of any service to those facilities; or (2) any increase in rate attachment rates. The Commission was also required to establish a complaint resolution process regarding pole attachments and a certification process for states to use to make notice of their authority to regulate the rates, terms and conditions of pole attachments. The information will be used by the Commission to hear and resolve petitions for stay and complaints as mandated by Section 224.

OMB Control No.: 3060–0248

Expiration Date: 7/31/99.
Title: Section 74.751 Modification of Transmission Systems.
Form: N/A.
Estimated Annual Burden: 100 total annual hours; average 30 minutes per respondent; 200 responses.
Description: Section 74.751(c) requires licensees of low power television or TV translator stations to notify FCC of modifications to equipment which can be made at the licensee's discretion. Section 74.751(d) requires certification that modifications comply with technical standards to be placed in station records.

OMB Control No.: 3060–0684

Expiration Date: 8/31/99.
Title: Cost Sharing Plan for Microwave Relocation.
Form: N/A.
Estimated Annual Burden: 1,790 total annual hours; average .5–1 hour per respondent; 2,000 responses.
Description: The collection is necessary to establish a mechanism for reimbursement to PCS licensees that incur expenses in relocating existing 2 GHz microwave facilities. The collection is also necessary to facilitate dispute resolution independent of the Commission, thus conserving Commission resources. The information will be used by PCS licensees that relocate incumbent 2 GHz microwave licensees as well as by subsequent PCS licensees, to determine whether particular licensees that are to be located are eligible for an extended negotiation period and to calculate the costs of the relocation.

OMB Control No.: 3060–0236

Expiration Date: 7/31/99.
Title: Section 74.703 Interference.
Form: N/A.
Estimated Annual Burden: 20 total annual hours; average 2 hours per respondent; 10 responses.
Description: Section 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing nature of interference, source of interfering signals, and remedial steps taken to eliminate interference. Data used by FCC staff to determine that interference has been eliminated.

OMB Control No.: 3060–0096

Expiration Date: 8/31/99.
Title: Application for Ship Radio Station License and Temporary Operating Authority.
Form: FCC 506/506A.
Estimated Annual Burden: 38,653 total annual hours; average 22 minutes per respondent; 106,192 responses.
Description: FCC rules require the use of the form 506 to apply for a new or modified ship radio station license. The FCC 506A is used by the applicant as a temporary operating authority ship station license. The data is used to determine eligibility. This form may also be used for renewing a ship station license.

OMB Control No.: 3060–0079

Expiration Date: 8/31/99.
Title: Application for an Amateur Club, RACES or Military Recreation Station License.
Form: FCC 610B.
Estimated Annual Burden: 168 total annual hours; average 5 minutes per respondent; 2,000 responses.
Description: FCC rules require applicants to file FCC Form 610B for new, modified, or renewed Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation Station Licenses. The data is used by Call Sign Administrators and Commission staff to determine if the applicant is eligible for the license.

OMB Control No.: 3060–0576

Expiration Date: 8/31/99.
Title: Application for Renewal of Amateur Radio Station License.
Form: FCC 610R.
Estimated Annual Burden: 168 total annual hours; average 5 minutes per respondent; 2,000 responses.
Description: FCC form 610R is automatically sent to licensees approximately 90 days prior to expiration to use to file for renewal of an Amateur Radio Station License.

OMB Control No.: 3060–0564

Expiration Date: 8/31/99.
Title: 76.924 Cost Accounting and Cost Allocation Requirements.
Form: N/A.
Estimated Annual Burden: 72,000 total annual hours; average 4–40 hours per respondent; 13,500 responses.
Description: Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition

Act of 1992, requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services and associated equipment. Cost accounting and cost allocation requirements standardize the methodology in which cable operators report financial data. The Commission's system of cable rate regulations imposes a price on cable service rates with certain categories of costs defined as external to the cap. The cost accounting and cost allocation requirements are necessary in order to assure that costs that are intended to receive external treatment are in fact accorded such treatment.

OMB Control No.: 3060–0126

Expiration Date: 8/31/99.
Title: Section 73.1820 Station Log.
Form: N/A.
Estimated Annual Burden: 13,611 total annual hours; average 1–1.5 hours per respondent; 13,519 responses.
Description: Section 73.1820 requires each licensee of an AM, FM or TV broadcast station to maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations. The data is used by FCC staff in field investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EBS is operating properly.

OMB Control No.: 3060–0550

Expiration Date: 8/31/99.
Title: Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competition.
Form: FCC 328.
Estimated Annual Burden: 20 total annual hours; average .5 hours per respondent; 40 responses.
Description: FCC Form 328 to provide a standardized, simple form for LFAs to file when requesting certification. The data are used by FCC staff to ensure that an LFA has met the criteria specified in Section 3 of the Cable Television Consumer Protection and Competition Act of 1992.

OMB Control No.: 3060–0362

Expiration Date: 8/31/99.
Title: Section 80.401 Station Documents Required.
Form: N/A.
Estimated Annual Burden: 44,478 total annual hours; average 4.48 hours per respondent; 11,318 responses.
Description: The information collected will be used to provide distress and safety inspections of radio equipment used to provide distress and safety communications capability during an emergency. Because the safety of ship's crew and passengers during a disaster could be jeopardized if radio communications were not available, the Commission is proposing that the inspecting technician and the ship's owner, operator or captain each certify in the ship's station log that the vessel has passed a safety inspection.

OMB Control No.: 3060–0573

Expiration Date: 9/30/99.
Title: Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.
Form: FCC 394.
Estimated Annual Burden: 7,000 total annual hours; average 1–5 hours per cable system owner, and 4 hours per local franchising authority (LFA); 1,000 system owners and 1,000 LFA's respond.
Description: The FCC 394 is used to apply for LFA approval to assign or transfer control of a cable television system. The data are used by the LFAs to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates or service in the franchise area.

OMB Control No.: 3060–0718

Expiration Date: 9/30/99.
Title: Part 101 Governing the Terrestrial Microwave Fixed Radio Service.
Form: N/A.
Estimated Annual Burden: 1,609 total annual hours; average 1.77 hours per response and .006 hours per recordkeeper; 1,025 respondents and 19,000 recordkeepers.
Description: The information will be used to determine technical, legal and other qualifications of applicants to operate a station in the public and private operational fixed services. This information is also used to ensure the applicants and licensees comply with ownership and transfer restrictions imposed by Section 310 of the Act.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–23876 Filed 9–17–96; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include Public Assistance and Hazard Mitigation in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

Bladen, Brunswick, Columbus, Craven, Cumberland, Duplin, Durham, Lenoir, Nash, New Hanover, Onslow, Orange, Pender, Robeson, Sampson and Wake Counties for Public Assistance and Hazard Mitigation (already designated for Individual Assistance and Direct Federal Assistance).

Beaufort, Bertie, Guilford, Halifax, Moore and Richmond Counties for Individual Assistance and Hazard Mitigation (already designated for Direct Federal Assistance).

Alamance, Carteret, Chatham, Edgecombe, Franklin, Granville, Greene, Harnett, Hoke, Johnston, Jones, Lee, Pamlico, Person, Vance, Warren, Wayne, and Wilson Counties for Hazard Mitigation Assistance (already designated for Direct Federal Assistance and Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,
Deputy Associate Director, Response and Recovery Directorate.
[FR Doc. 96–23914 Filed 9–17–96; 8:45 am]
BILLING CODE 6718–02–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

Carteret, Chatham, Edgecomb, Franklin, Granville, Greene, Harnett, Jones, Lee, Pamlico, Person, Vance, Warren and Wilson Counties for Public Assistance (already designated for Direct Federal Assistance, Individual Assistance and Hazard Mitigation).

Henderson, Polk and Rutherford Counties for Individual Assistance and Hazard Mitigation (already designated for Direct Federal Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–23915 Filed 9–17–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1134–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1134–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 11, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated September 6, 1996, FEMA is extending 100 percent Federal funding for direct Federal assistance emergency work for the State of North Carolina approved by FEMA through September 13, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–23916 Filed 9–17–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 9, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include Individual Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The Counties of Mecklenburg, Page, Rappahannock, Shenandoah and Warren for Individual Assistance (already designated for Direct Federal Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance).

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–23913 Filed 9–17–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 2, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Alice Kohfeld Trust No.1, Norton, Kansas; to retain a total of 27 percent, W.B. Smiley Testamentary Trusts A and B, Norton, Kansas, to retain a total of 28.8 percent, and Robert W. Smiley, Norton, Kansas, as sole trustee of the W.B. Smiley Testamentary Trusts A and B, the C.W. Smiley Trusts No. 1 and No. 2, and Julia A. Smiley Trust No. 2, to retain a total of 49.5 percent, of the voting shares of First Norton Corporation, Norton, Kansas, and thereby indirectly retain First Security Bank & Trust Company, Norton, Kansas.

Board of Governors of the Federal Reserve System, September 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23855 Filed 9-17-96; 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 Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bluestem Development Corporation, Joy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Joy Development Corporation, Davenport, Iowa, and thereby indirectly acquire Joy State Bank, Joy, Illinois.

Board of Governors of the Federal Reserve System, September 12, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23854 Filed 9-17-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, September 23, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23980 Filed 9–13–96; 4:12 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System*.

TIME AND DATE: 2:30 p.m., Monday, September 23, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding an operations review.

2. Any items carried forward from a previously announced meeting.

* * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 13, 1996

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–23981 Filed 9–13–96; 4:12 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 922–3236]

Hyde Athletic Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Peabody, Massachusetts-based athletic footwear manufacturer from misrepresenting, in any manner, that footwear made wholly abroad was made in the United States. The agreement resolves charges that Hyde misrepresented that all of its Saucony footwear is made in the United States when a substantial amount is made wholly abroad.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Federal Trade Commission, S–4302, 6th & Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3042. C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Hyde Athletic Industries, Inc., a corporation (''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Hyde Athletic Industries, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Hyde Athletic Industries, Inc., is a Massachusetts corporation with its principal office or place of business at 13 Centennial Industrial Park Drive, Peabody, Massachusetts 01960. Proposed respondent is a U.S. manufacturer, importer, and seller of footwear, with manufacturing facilities in Bangor, Maine.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this order, the term ''Clearly and prominently'' shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

D. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel, that is sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

I

It is ordered that respondent, Hyde Athletic Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any footwear in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that footwear made wholly abroad is made in the United States.

PROVIDED, however, that respondent will not be in violation of this Order, if, in connection with a truthful representation about domestic production of its footwear, it makes one of the following disclosures, if truthful, in a clear and prominent manner.

A. ''Most Saucony models are made in the USA''; or

B. ''Models ____ are not made in the USA''; or

C. ''Only models ____ are imported''; or

D. ''____% of Saucony footwear is made in the USA.''

This proviso shall not apply to any advertising, labeling or promotional material containing any depiction of or other representation relating to footwear made wholly abroad.

II

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees

engaged in the preparation or placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

V

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VI

It is further ordered that this Order will terminate twenty (20) years from the date it becomes final, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later;

Provided, However, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided Further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Hyde Athletic Industries, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of athletic shoes. The Commission's complaint charges that respondent falsely represented that all of its athletic shoes sold in the United States are made in the United States.

The proposed consent order contains a provision which is designed to remedy the advertising violation charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting that footwear made wholly abroad is made in the United States. The proposed order would allow respondent, in connection with a truthful representation about domestic production of its footwear, to make one of the following disclosures, if truthful, in a clear and conspicuous manner: (a) ''Most Saucony products are made in the USA''; (b) ''Models ____ are not made in the USA''; (c) ''Only models ____ are imported''; or (d) ''____% of Saucony footwear is made in the USA.''

This order provision provides that if Hyde chooses to make affirmative disclosures in its advertising it can do so if they are truthful and nondeceptive. Although several of the disclosures set out in Part I of the proposed order contain the phrase ''Made in USA,'' this provision is not intended to address the standard for when, if at all, a product that is made partly from domestic parts and labor and partly from foreign parts and labor may appropriately be labeled ''Made in USA''; that issue is the subject of a separate, ongoing review by the Commission. Rather, Part I is addressed to the circumstance in which some of the company's products are made entirely abroad.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order.

Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation which may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Roscoe B. Starek III in the Matter of Hyde Athletic Industries, Inc.

I would have preferred to have accepted the original consent agreement rejected by the Commission last fall. As I have consistently stated, case-by-case enforcement—rather than a regulatory proceeding—is the appropriate means to evaluate the ''Made in USA'' standard.[1] Since a majority of the Commission has opted to conduct a broad review of the ''Made in USA'' standard, however, it is premature for the Commission to condone use of the Made in USA claims set forth in the safe harbor until it proclaims what the standard is.

[FR Doc. 96–23922 Filed 9–17–96; 8:45 am]

BILLING CODE 6750–01–P

[File No. D.9268]

New Balance Athletic Shoe, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the

[1] *See* Request for Public Comment in Preparation for Public Workshop Regarding ''Made in USA'' Claims in Product Advertising and Labeling, 60 FR 53923, 53930 (October 18, 1995) (Dissenting Statement of Commissioner Roscoe B. Starek III); *Hyde Athletic Industries, Inc.*, File No. 922–3236 (Dissenting Statement of Commissioner Roscoe B. Starek III).

Boston-based athletic footwear manufacturer from misrepresenting, in any manner, that footwear made wholly abroad was made in the United States, and the quantity of footwear it exports. The agreement resolves charges that New Balance misrepresented that all of its athletic footwear sold in the United States is made in the United States when a substantial amount is made wholly abroad. The Commission also alleged that New Balance falsely represented that it annually exports to Japan hundreds of thousands of pairs of athletic shoes that are American made.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Federal Trade Commission, S–4302, 6th & Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3042; C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 1437, Chicago, Illinois 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25 of the Commission's Rules of Practice (16 CFR 3.25), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b) (6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b) (6) (ii)).

Agreement Containing Consent Order to Cease and Desist

The agreement herein, by and between New Balance Athletic Shoe, Inc., hereinafter sometimes referred to as respondent, and its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance herewith, the parties hereby agree that:

1. Respondent New Balance Athletic Shoe, Inc., is a Massachusetts corporation with its principal office and place of business at 61 North Beacon Street, Boston, Massachusetts. Respondent is a U.S. manufacturer, importer, and seller of footwear, with manufacturing facilities in Lawrence and Boston, Massachusetts, and Norridgewock and Skowhegan, Maine.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging respondent with violations of Section 5(a) of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint or that the facts as alleged in the complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint and amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, New Balance Athletic Shoe, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any footwear in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication:

1. That footwear made wholly abroad is made in the United States.

2. The quantity of footwear it exports.

II

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered that respondent shall distribute a copy of this Order to

each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other sales materials covered by this Order.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

V

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VI

It is further ordered that this Order will terminate twenty (20) years from the date it becomes final, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later;

Provided, However, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided Further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent New Balance Athletic Shoe, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of athletic shoes. The Commission's amended complaint, issued on December 18, 1995, charges that respondent falsely represented that all of its athletic shoes sold in the United States are made in the United States, and that it annually exports to Japan hundreds of thousands of pairs of athletic shoes that are made in the United States.

The proposed consent order contains a provision which is designed to remedy the advertising violation charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting: (1) that footwear made wholly abroad is made in the United States; and (2) the quantity of footwear it exports. Part II requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation which may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Roscoe B. Starek, III in the Matter of New Balance Athletic Shoe, Inc.

I continue to object to the approach that the majority of the Commission has elected in this litigation. The settlement is hardly surprising in light of the Commission's decision to drop the most important allegation in this matter—involving unqualified ''Made in USA'' claims for products assembled in the United States from foreign and domestic components—in favor of an eviscerated complaint and notice order addressing only narrow claims about exported footwear and footwear made wholly abroad. For the reasons stated in my dissent from the Commission's decision to narrow the complaint and notice order, I again dissent. See New Balance Athletic Shoe, Inc., Docket No. 9268 (Dissenting Statement of Commissioner Roscoe B. Starek, III).

[FR Doc. 96–23923 Filed 9–17–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–26]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products—(0920–0338)—Extension—Oral use of smokeless tobacco represents a significant health risk which can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, smokeless tobacco use is not a safe substitute for cigarette smoking. The Centers for Disease Control and Prevention's (CDC) Office on Smoking and Health (OSH) has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub.L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco products to provide the Secretary of HHS with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. HHS is authorized to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients. The total cost to respondents is estimated at $22,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Tobacco manufacturers	11	1	26	286
Total				286

2. Survey of diagnostic and management practices for group A streptococcal pharyngitis—New—Appropriate diagnosis and management of streptococcal pharyngitis is important to prevent severe nonsuppurative complications such as rheumatic fever. In addition, early treatment will prevent suppurative complications and decrease spread of infection to close contacts. To achieve optimal sensitivity, the American Academy of Pediatrics recommends that throat cultures be performed, or that if an antigen detection test is done, that a negative test be backed-up by culture. Despite these recommendations, many clinicians diagnose streptococcal pharyngitis based on clinical findings or on the results of an antigen detection test alone. One factor that has been shown to be associated with the use of culture for diagnosis, is whether the physician cultures for group A streptococci in the office.

Recent changes in the medical care system and in Federal regulations may have affected the availability and use of throat cultures in office settings. Managed care organizations are unlikely to reimburse clinicians for performing two diagnostic tests and, in a capitated system, any use of diagnostic testing would reduce a physician's profit. Moreover, recently implemented CLIA regulations of office laboratories may have decreased the use of office culture as physicians find it easier not to test than to comply with these regulations.

Surveying physician diagnostic and management practices for group A streptococcal pharyngitis will help identify current practices and the factors that have affected the use of diagnostic testing, especially throat culture. These results can be used to develop interventions to promote appropriate diagnostic methods, leading to improved accuracy of diagnosis, and prevention of morbidity.

This proposed two year study, will collect data from practicing pediatricians and family physicians on the characteristics of their practice, their approach to diagnosis of pharyngitis including the use of laboratory testing, the testing methods that are used in their office laboratory, recent changes that they have made in testing, and reasons for those changes. This survey will build on results of a survey that was conducted in 1991 before the implementation of CLIA regulations and the expansion of managed care. The survey will be carried out during the winter of 1996–97, in the Chicago metropolitan area by the Chairman of the American Academy of Pediatrics Section on Infectious Diseases, who also is an expert on streptococcal infections. Data will be entered and analyzed by this investigator in collaboration with CDC and the HCFA Region V office in Chicago. The total cost to respondents is estimated at $33,350.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Pediatricians and Family Physicians with primary care practices.	2000	1	0.333	667
Total				677

3. Sentinel Surveillance for Chronic Liver Disease—New— A questionnaire has been designed to collect information for the Sentinel Surveillance for Chronic Liver Disease project. The purpose of the project is to determine the incidence and period prevalence of physician-diagnosed chronic liver disease in a defined geographic area, the contribution of chronic viral hepatitis to the burden of disease, and the influence of etiologic agents(s) and other factors on mortality, and to monitor the incidence of and mortality from chronic lever disease over time. The information gathered will be analyzed, in conjunction with data collected from other sources, to address these questions. The results of the project will assist the Hepatitis Branch, Division of Viral and Rickettsial Diseases, National

Center for Infectious Diseases in accomplishing the part of its mission related to preparing recommendations for the prevention and control of all types of viral hepatitis and their sequellae. In order to focus prevention efforts and resource allocation, a representative view of the overall burden of chronic liver disease, its natural history, and the relative contribution of viral hepatitis is needed. The total cost to respondents is estimated at $600.

Respondents	No. of respondents	No. of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
All consenting adults with physician- diagnosed chronic liver disease residing in catchment area	120	1	0.50	60
Total				60

Dated: September 12, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–23863 Filed 9–17 –96; 8:45 am]

BILLING CODE 4163–18–P

Cabin Exposure Assessment for a Study of Reproductive Outcomes Among Female Flight Attendants; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Cabin Exposure Assessment for a Study of Reproductive Outcomes Among Female Flight Attendants.

Time and Date: 9 a.m.–4 p.m., October 11, 1996.

Place: Alice Hamilton Laboratories, NIOSH, Conference Room C, 5555 Ridge Road, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Invited participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the study, ''Cabin Exposure Assessment for a Study of Reproductive Outcomes Among Female Flight Attendants,'' being conducted at NIOSH. Participants on the peer review panel will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Martha Waters, Ph.D., NIOSH, CDC, M/S R–14, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4458.

Dated: September 11, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–23866 Filed 9–17–96; 8:45 am]

BILLING CODE 4160–19–M

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., October 9, 1996, 8:30 a.m.-1 p.m., October 10, 1996.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items will include an update on ACET's letter to the Secretary of the Department of Health and Human Services; discussion of interactions between rifamycins and protease inhibitors; a report on Isoniazid hepatitis; and a discussion on tuberculosis vaccine development.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Program Specialist, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

Dated: September 11, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–23861 Filed 9–17–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0166]

Pasca Plasma Center, Inc.; Revocation of U.S. License No. 1015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1015) and the product license issued to Pasca Plasma Center, Inc., (Pasca) for the manufacture of Source Plasma. Pasca has facilities in Berkeley, Oakland, and Richmond, CA. In a letter to FDA dated July 7, 1993, Pasca submitted U.S. license No. 1015 for revocation.

DATES: The revocation of the establishment license (U.S. License No. 1015) and the product license became effective on August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie A. Windsor, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 1015) and the product license issued to Pasca at the following locations for the manufacture of Source Plasma: (1) 1796 University Ave., Berkeley, CA 94703 (U.S. License 1015–003); (2) 650 E. 14th St., Oakland, CA 94606 (U.S. License 1015–001); and (3) 2316 MacDonald Ave., Richmond, CA 94804 (U.S. License 1015–002). Pasca's mailing address is: 650 E. 14th St., Oakland, CA 94606.

FDA inspected Pasca's Richmond facility from December 1, 1992 through December 11, 1992, and its Oakland facility from March 22, 1993, through April 2, 1993. In addition to the inspections, FDA conducted investigations which included interviews with individuals

knowledgeable in the daily operations of the Oakland, Richmond, and Berkeley facilities. As a result of these inspections and investigations, FDA determined that there were numerous deviations from the standards established in the license as well as the applicable Federal regulations.

The inspections and investigations indicate that Pasca repeatedly deviated from donor protection standards which are intended to assure a continuous and healthy donor population and to assure the continued safety, purity, potency, and quality of the products manufactured. Deviations at the Richmond and Berkeley facilities included, but were not limited to, the following: (1) At the Richmond facility, failure to assure the suitability of the donor would be determined by a qualified licensed physician on the day of collection from the donor as required by 21 CFR 640.63; (2) at the Richmond facility, failure to determine that donors were in good health on the day of donation as required by 21 CFR 640.63(c); (3) at the Richmond facility, failure to assure that a qualified licensed physician explained the hazards of the plasmapheresis procedure to the prospective donor as required by 21 CFR 640.61; (4) at the Richmond and Berkeley facilities, violation of general donor suitability standards as required by 21 CFR 640.63(d); and (5) at the Richmond and Berkeley facilities, failure to assure that the skin of the donor at the site of phlebotomy was prepared by a method that gives maximum assurance of a sterile container of blood as required by 21 CFR 640.64(e). Deviations identified at the Oakland facility included: (1) Failure to provide adequate space for private and accurate examinations to determine their suitability and good health as donors as required by 21 CFR 606.40(a)(1); (2) failure to assure that facilities are maintained in a clean and orderly manner as required by 21 CFR 606.40; and (3) failure to determine the suitability of a donor by means of medical history, tests and physical exam as required by 21 CFR 640.63(a) and (c).

FDA's inspections and investigations also revealed that Pasca's operations were not in compliance with Federal regulations governing establishment standards and current good manufacturing practices (CGMP's). Deviations included the following: (1) Pasca and its responsible head failed to properly train and ensure the competent performance of its employees as required by 21 CFR 600.10 and 21 CFR 606.20; (2) at least one employee at the Berkeley facility was not provided with the proper training needed to perform his assigned duties; (3) despite not having attended training programs or read the standard operating procedures (SOP's), employees at the Berkeley facility were required to sign training forms that indicated that they had read the SOP's or participated in training programs; and (4) management was aware that employees at the Berkley facility conferred with each other during a recent test to determine the correct answers. In addition, Pasca employees at the Berkeley facility seriously departed from CGMP's by routinely squeezing saline into the whole blood bags during collection, to shorten the collection time for a full bag, and directly reinfusing whole blood into donors from whom an excess of whole blood had been collected.

FDA's inspections and investigations also revealed that at both the Richmond and Berkeley facilities, Pasca violated general donor suitability standards defined in 21 CFR 640.63(d). Pasca's violations included the following: (1) Pasca employees routinely accepted donations from donors who appeared to be under the influence of alcohol; (2) Pasca failed to determine that donors were in good health on the day of donation as required by 21 CFR 640.63(c); and (3) Pasca failed to assure that the skin of the donor at the site of phlebotomy was prepared by a method that gives maximum assurance of a sterile container of blood as required by 21 CFR 640.64(e) in that Berkeley facility employees failed to routinely perform the arm scrub at the phlebotomy site for 30 seconds as required by the SOP, and, at the Richmond facility, a donor's arm was scrubbed for only 15 seconds which was inconsistent with the SOP that required a 30-second arm scrub to be performed in concentric circles.

Because these deviations represented a danger to health, FDA suspended Pasca's establishment and product licenses at the Oakland location by letter dated April 16, 1993, and at the Berkeley and Richmond locations by letter dated May 10, 1993. Subsequently, Pasca informed FDA that it was discontinuing the manufacture of products at all facilities. In a letter to FDA dated July 7, 1993, Pasca submitted its license for revocation.

FDA has placed copies of the letters discussed above on file under the docket number found in brackets in the heading of this notice with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68) the establishment license (U.S. License No. 1015) and the product license for the manufacture of Source Plasma issued to Pasca at the Berkeley, Oakland, and Richmond locations were revoked, effective August 4, 1993.

This notice is issued and published under 21 CFR 601.8, and the authority delegated to the Director, Center for Biologics Evaluation and Research under 21 CFR 5.67.

Dated: August 28, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 96–23873 Filed 9–17–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Submission for OMB Review; Comment Request; The NIH Consultant Information File System

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the Federal Register on June 11, 1996, page 29567 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* The NIH Consultant Information File System. *Type of Information Collection Request:* Revision. *Form Number:* OMB 0925–0358 (approved through 9/30/96) NIH 2668–1; 2663–3, *Need and Use of Information Collection:* Directly support the recruitment and appointment of experts that provide scientic merit and program relevance evaluations of the research grant applications and research contract proposals submitted to the NIH.

The primary objective of this system is to support the NIH Peer Review system, but other DHHS review administrative staff use the system to identify experts to support their advisory committees. *Frequency of Response:* Intake established record on file, participant can initiate the updating of their information at any time. Formal information update requested on the occasion of their appointment to an advisory committee and every 24 months. *Affected Public:* Individuals; Not-for-profit institutions; Business or other for-profit; Federal Government; State, Local or Tribal Government. *Type of Respondents:* Adult scientific professionals. The annual professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 9,741; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.305; and *Estimated Total Annual Burden Hours Requested:* 2,998. The estimated annualized cost to respondents is $164,876 (Using a $55 physician/professor hourly wage rate.) There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: CAPT Edward C. Farley, USPHS Project Clearance Officer, DRG, NIH, Rockledge II Building, Room 3032, 6701 Rockledge Drive, Bethesda, MD 20892–7762, or call non-toll-free number (301) 594–0601 or E-mail your request, including your address to: (efarley@nih.gov).

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before October 18, 1996.

Dated: September 11, 1996.

John H. Jones,

Acting Executive Officer, DRG.

[FR Doc. 96–23936 Filed 9–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Panel: National Institute on Aging Special Emphasis Panel.

Date of Meeting: October 21, 1996.

Time of Meeting: 10:00 a.m. to adjournment.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Purpose/Agenda: To review grant applications.

Contact Person: William A. Kachadorian, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institute of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Dates of Meeting: October 24–25, 1996.

Times of Meeting: October 24—7:00 p.m. to recess, October 25—8:00 a.m. to adjournment.

Place of Meeting: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Purpose/Agenda: To review proposed program project.

Contact Person: William A. Kachadorian, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: September 13, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23931 Filed 9–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 10, 1996.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 22, 1996.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: W. Gregory Zimmerman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: September 14, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23932 Filed 9–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: Studies of Chemical Disposition in Mammals.

Date: September 30, 1996.

Time: 9:00 A.M.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Room D–350, Research Triangle Park, NC.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709 (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological Effects of Power Frequency EMS.

Date: October 28–29, 1996.

Time: 8:30 A.M.

Place: National Institute of Environmental Health Sciences South Campus, Building 101, Conference Center 101–B, Research Triangle Park, NC.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 522b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: September 12, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23933 Filed 9–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institutes of Nursing Research Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Institutional (T32) and Individual (F31 and F32) National Research Service Awards and Mentored Research Science Development Awards-Nursing (K01).

Date: October 23–25, 1996.

Time: 8:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Mary Stephens-Frazier, Ph.D., Building 45, Room 3AN–32E, 45 Center Drive, MSC 6302, Bethesda, MD 20892–6302, (301) 594–5971.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: September 2, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23934 Filed 9–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Amended Notice of Meeting of the National Advisory Council on Aging

Notice is hereby given of a change in the schedule for the meeting of the National Advisory Council on Aging, National Institute on Aging, September 26–27, 1996, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland published in the Federal Register on August 20 (61 FR 43065). This meeting was scheduled to be open to the public on Thursday, September 26 from 8:30 a.m. To 2:30 p.m. and again on Friday, September 27 from 8:30 a.m. until adjournment.

The meeting was scheduled to be closed on Thursday, September 26 from 2:30 until recess. The meeting will be open to the public on Thursday, September 26 from 2:00 until 3:00 p.m., and again on Friday, September 27 from 8:30 a.m. until adjournment. The closed portion of the meeting will take place on Thursday, September 26 from 3:00 p.m. to recess.

Dated: September 10, 1996.

Paula N. Hayes,

Acting Committee Management Office, NIH.

[FR Doc. 96–23935 Filed 9–17–96; 8:45 a.m.]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

[4310–55]

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et. seq.*).

PRT–819573

Applicant: The Peregrine Fund, Boise, ID.

The applicant requests a permit to import live harpy eagle (*Harpia harpyja*), blood, tissue and DNA samples and to export/re-export live birds as part of an on-going conservation project which enhances the survival and propagation of this species. This notice covers activities conducted by the applicant over a five year period.

PRT–819460

Applicant: Zoological Society of San Diego, Escondido, CA.

The applicant requests a permit to import four Antillean manatees (*Trichechus manatus manatus*), determined to be Pre-Act under the Marine Mammal Protection Act, for the purpose of enhancement of the species through conservation education.

PRT–819657

Applicant: Robert B. Haigh, Chicago, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–819654

Applicant: Gordon F. Bennett, Black River, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–819653

Applicant: Donald Lafave, Black River, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 13, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority..

[FR Doc. 96–23929 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–55–M

Fish and Wildlife Service

Emergency Exemption: Issuance

On September 9, 1996, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–819483) to Charles Darwin Foundation, Falls Church, Virginia to import blood and tissue samples from Galapagos tortoises (*Geochelone nigra*). The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the tortoises existed and that no reasonable alternative was available to the applicant, for the following reasons: (1) the Charles Darwin Research Station in the Galapagos Islands have lost 8 tortoises to an unknown disease and 9 more are showing symptoms of this disease; (2) by importing these samples, researchers hope to isolate the disease-causing agent in order to determine the best treatment to the disease and prevent further loss of this species.

Dated: September 13, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc 96–23930 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Plantation Palms, L.L.C., for Construction of a Residential Project on the Fort Morgan Peninsula, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Plantation Palms, L.L.C., (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), (Act) as amended. The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 4-acre tract of land owned by the Applicant on the Fort Morgan Peninsula, Baldwin County, Alabama. The project would be called Plantation Palms, which will include three condominium complexes, 38 single family/duplex lots, their associated landscaped grounds and parking areas, recreational amenities, and dune walkover structures.

The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for this incidental take application. Copies of the EA and/or HCP may be obtained by making a request in writing to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made preliminary determinations that issuing an ITP to the Applicant is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Findings of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the application, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 18, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Daphne, Alabama, Field Office, 2001 Highway 98, Daphne East Office Plaza, Suite A, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit(s) under PRT–816555 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Celeste South at the Daphne, Alabama, Field Office (see **ADDRESSES** above), telephone: 334/441–5181.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates,* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal ABM habitat is currently considered dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM surveys on the Applicants' properties reveal habitat occupied by ABM. The Applicants' properties contain designated critical habitat for the ABM. Construction of the project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the project may reduce

available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives for each project. One action proposed for each project is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated ABM critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment to acquire ABM habitat off-site or otherwise perform some other conservation measure for the ABM. The HCPs provide funding sources for these mitigation measures. Another alternative is consideration of different project designs that further minimize permanent loss of ABM habitat. A third alternative is no-action, or the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA and will result in the FONSI. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicants have ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITPs are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITPs are contingent upon the Applicants' compliance with the terms of their permits and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of either Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue either ITP.

Dated: September 10, 1996.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 96–23849 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Cow Creek Band of Umpqua Tribe of Indians Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that by Resolution No. 96–11, the Cow Creek Band of Umpqua Tribe of Indians Liquor Ordinance was duly adopted by the Board of Directors of the Cow Creek Band of Umpqua Tribe of Indians on May 8, 1996. The Ordinance provides for the regulation of the sale, possession and consumption of liquor on the Cow Creek Band of Umpqua Indian Reservation and is in conformity with the laws of the State of Oregon.

DATES: This Ordinance is effective as of September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street N.W., MS 4603–MIB, Washington, D.C. 20240–4001; telephone (202) 208–3463.

SUPPLEMENTARY INFORMATION: The Cow Creek Band of Umpqua Tribe of Indians Liquor Ordinance is to read as follows:

Law and Order Code of the Cow Creek Band of Umpqua Tribe of Indians

Title 12—Liquor Code

12–10 Authorization and Definitions

12–10–010 Authorization and Repeal of Inconsistent Legislation

The Cow Creek Band of Umpqua Tribe of Indians (the ''Tribe'') is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) and the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (Pub. L. 97–391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgement Funds Act of October 26, 1987 (Pub. L. 100–139), and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally-supervised constitutional ballot, on July 8, 1991 (the ''Tribal Constitution).

Pursuant to Article III, Section 1 of the Tribal Constitution, the Cow Creek Tribal Board of Directors (the ''Board'') is the governing body of the Tribe. Pursuant to Article VII, Section I (d) of the Tribal Constitution, the Board has the authority to ''administer the affairs and assets of the Tribe * * *'' Pursuant to Article VII, Section I (i) of the Tribal Constitution, the Board has the power to ''enact ordinances and laws governing the conduct of all persons or tribally-owned land; to maintain order and protect the safety, health, and welfare of all persons within the jurisdiction of the Tribe; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations * * *'' Pursuant to Article VII, Section I (t) of the Tribe's Constitution, the Board has ''such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe.''

This Title 12 of the Law and Order Code of the Cow Creek Band of Umpqua Tribe of Indians is established for the purpose of strengthening Tribal self-government and providing for the protection of the members and property of the Tribe. Adoption hereof is an exercise of the inherent sovereignty of the Tribe, and is undertaken by the Tribal Board of Directors pursuant to its constitutional authority to do so. Any prior Tribal law which is inconsistent with the purpose and procedures established by this Title 12 are hereby repealed to the extent of any such inconsistency.

The Tribe has decided to open all lands within its jurisdiction to the possession, consumption, and sale of Liquor by enacting this Title 12 (''Title 12'') to the Tribal Law and Order Code. This Title 12 is adopted pursuant to the Act of August 15, 1953 (Pub. L. 83- 277, 67 Stat. 588, 18 U.S.C. § 1161) and shall serve as the ''liquor ordinance'' referenced therein.

This Title 12 shall govern all Liquor Sales and distribution on the Reservation and will increase the ability of the Tribe to control Reservation Liquor distribution and possession.

Tribal regulation of the Sale, possession, and consumption of Liquor on the Reservation is necessary to protect the health, security, and general welfare of the Tribe, and to address Tribal concerns relating to alcohol use on the Reservation. In order to further these goals, the Tribe has adopted this Title 12, which shall be liberally construed to fulfill the purposes for which it has been adopted.

12–20 Definitions

12–20–010 Definitions of Words

As used in this Title 12, the following words shall have the following meanings unless the context clearly requires otherwise:

(a) *Alcohol* means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(b) *Alcoholic Beverage* is synonymous with the term ''Liquor'' as defined at section 12–20–010(d) hereof.

(c) *Beer* means any beverage obtained by the fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water and which contains not more than four percent of Alcohol by volume.

(d) *Liquor* includes the four varieties of Liquor herein defined (Alcohol, Spirits, Wine, and Malt Liquor), and all fermented, spirituous, vinous, or Malt Liquor or combinations thereof, and mixed Liquor, a part of which is fermented, spirituous, vinous, or Malt Liquor, or otherwise intoxicating. Every liquid or solid or semisolid or other substance, patented or not, containing Alcohol, Spirits, Wine or Malt Liquor, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, containing more than one percent of Alcohol by weight shall be conclusively deemed to be intoxicating.

(e) *Malt Liquor* means Beer, Strong Beer, ale, stout, and porter.

(f) *Package* means any container or receptacle used for holding Liquor.

(g) *Reservation* means all lands of the Tribe and any lands which may in the future come within the jurisdiction of the Tribe by any lawful means.

(h) *Sale* and *Sell* mean exchange, barter, and traffic; and also include the Selling or supplying or distributing, by any means whatsoever, of Liquor, or of any liquid known or described as ''beer'' or by any name whatsoever commonly used to describe ''malt liquor'' or ''liquor'' or ''wine'' by any person to any person.

(i) *Spirits* means any beverage which contains Alcohol obtained by distillation, including Wines exceeding seventeen percent of Alcohol by weight.

(j) *Strong Beer* means any beverage obtained by the Alcoholic fermentation or infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water, including ale, stout, and porter, containing more than four percent of Alcohol by weight.

(k) *Title 12* means this Liquor Code, which shall serve the Tribe as the liquor ordinance referenced at 18 U.S.C. § 1161.

(l) *Tribe* means, and ''Tribal'' refers to, the Cow Creek Band of Umpqua Tribe of Indians.

(m) *Wine* means any Alcoholic Beverage obtained by fermentation of fruits (grapes, berries, apples, etc.) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during, or after fermentation, and containing not more than seventeen percent of Alcohol by weight, including sweet Wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding seventeen percent of Alcohol by weight.

12–30 Sales, Distribution, Possession, Consumption

12–30–010 Authorization

The Tribe, its members and other persons including, but not limited to, corporations, partnerships, associations and natural persons are hereby authorized to introduce, Sell, distribute, warehouse, possess and consume Alcoholic Beverages within the Reservation, in accordance with the laws of the State of Oregon (including the Liquor licensing provisions thereof) and this Title 12; provided, however, that the right of any person to introduce, Sell, distribute, warehouse, possess and consume Alcoholic Beverages within the Reservation may be rescinded temporarily or permanently by the Board, by resolution approved by at least eight (8) members of the Board, after notice and a hearing as directed by the Board and a formal finding that the continued introduction, Sale, distribution, warehousing, possession or consumption Alcoholic Beverages within the Reservation by such person is contrary to the best interests or general welfare of the Tribe or Tribal members.

12–40 Penalties

12–40–010 General

Notwithstanding any other provision of this Title 12, no penalty (i) may be imposed pursuant or related to this Title 12 in contravention or in excess of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C.A. § 1301 et seq. (''ICRA'') or other applicable law, and (ii) may be imposed without proper notice and a hearing in accordance with applicable law. Any person who violates any part of Section 12–40 of this title 12 may be subject to a civil penalty for a civil infraction in addition to any penalty imposed under applicable Oregon law. Such civil penalty shall not exceed the sum of $1,000 for each such infraction.

12–40–020 Illegal Transportation, Still, or Sale Without Permit

No person shall, within the Reservation, Sell or offer for Sale or transport in any manner any Liquor within the boundaries of the Reservation in violation of this Title 12, or operate or have in his possession any Spirit distillation device or any substance meant or specifically concocted to be distilled into Liquor (not including devices or mash related to the home manufacture of Beer, Strong Beer, or Wine solely for the purpose of personal consumption and not for Sale) except as authorized by this Title 12.

12–40–030 Illegal Purchase of Liquor

No person shall buy Liquor within the boundaries of the Reservation other than from an individual or entity properly licensed pursuant to this Title 12.

12–40–040 Furnishing Liquor to Minors

Except in the case of Liquor given or administered to a person by his physician or dentist for medicinal purposes, no person under the age of 21 years shall consume, acquire or have in his possession any Alcoholic Beverages except when such beverages are used in connection with religious services. No person shall permit any other person under the age of 21 to consume Liquor on his premises or on any premises under his control except in those situations set out in this section.

12–40–050 Unlawful Transfer of Identification

No person shall transfer any identification of age to a minor for the purpose of permitting such minor to obtain Liquor. Corroborative testimony of a witness other than the minor shall be a requirement of conviction under this section.

12–40–060 Possession of False or Altered Identification

No person shall attempt to purchase an Alcoholic Beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years.

12–40–070 Illegal Items Declared Contraband

Alcoholic Beverages which are possessed contrary to the terms of this Title 12 are hereby declared to be contraband. Any officer who shall make an arrest under this section shall seize all contraband which he shall have the authority to seize consistent with the Tribal Constitution, the Tribal Law and Order Code, the ICRA and any other applicable law.

12–40–080 Non-Indian Violations

Nothing in this Title 12 shall be construed to require or authorize the criminal trial and punishment by the Tribe of any non-Indian except to the extent otherwise allowed under applicable law. In general, when any provision of this Title 12 is violated by a non-Indian, he or she shall be referred to state and/or federal authorities for prosecution under applicable law while remaining liable for any civil penalty imposed under Tribal law. It is the expressed intent of the Tribe that any non-Indian referred to state and/or federal authorities pursuant to this Section 12–40–080 be prosecuted to the furthest extent of applicable law.

12–50 Severability and Effective Date

12–50–010 Severability

If any section, or any part thereof, of this Title 12 or the application thereof to any party, person or entity in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative enactment, the remainder of the section or part of this Title 12 shall not be affected thereby and shall remain in full force and effect as though no section or part thereof has been declared to be invalid.

12–50–020 Effective Date

This Title 12 becomes effective, as a matter of Tribal law, upon adoption hereof by Resolution approved by no less than eight (8) members of the Board by roll call vote, and effective as a matter of federal law on such date as the Secretary of the Interior certifies and publishes the same in the Federal Register.

12–50–030 Application of 18 U.S.C. § 1161

All acts and transactions under this Title 12 shall be in conformity with the laws of the State of Oregon to the extent required under 18 U.S.C. § 1161.

12–50–040 Jurisdiction and Sovereign Immunity

Nothing in this Title 12 shall be construed to limit the jurisdiction of the Tribe and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities and agents.

12–50–050 Amendment or Repeal of Title 12

After this Title 12 becomes effective, neither this Title 12, nor any section, part or word hereof, or any resolution adopted by the Board pursuant to the terms hereof, may be amended or repealed other than by Board resolution approved by unanimous roll-call vote of the entire Board at a special meeting of the Board which meeting may only be convened upon receipt by the Tribal Secretary of a petition signed by at least eight (8) members of the Board.

Dated: September 11, 1996.

Ada E. Deer,

Assistant Secretary - Indian Affairs.

[FR Doc. 96–23903 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–02–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Submission for OMB Review; Comment Request

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for AID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 736–4743.

SUPPLEMENTARY INFORMATION:

Title: USAID Acquisition Regulations (AIDAR)—Information Collection Elements.

Form No.: AID 1450–17, Contractor Employee Biographical Data Sheet.

OMB No.: 0412–0520.

Type of Submission: Revision of a currently approved collection.

Abstract: USAID is authorized to make contracts with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collection requirements placed on the public are published in 48 CFR Chapter 7, and include such items as the Contractor Employee Biographical Data Sheet and Performance & Progress Reports (AIDAR 752.7026). These are all USAID unique procurement requirements. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information collection requirements during the post-award period are based on the need to administer public funds prudently.

Annual Reporting Burden:

Number of Respondents: 3526.

Average hours per response: 92250.

Total annual responses: 314,014.

Dated: September 3, 1996.

Genease E. Pettigrew,

Chief, Information Support Servies Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–23826 Filed 9–17–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–315]

Certain Plastic, Encapsulated Integrated Circuits; Enforcement Proceeding, Notice of Decision Not To Review Recommended Determinations Terminating Texas Instruments as a Party and Granting Motion To Terminate Enforcement Proceeding, and To Refer Matter to the Department of Justice for Possible Further Proceedings Under 18 U.S.C. § 1001

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to adopt the recommended determinations (RDs) issued on May 8, 1995, by the presiding administrative law judge (ALJ) in the above-captioned enforcement proceeding.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this formal enforcement proceeding on January 10, 1994. 59 Fed. Reg. 3123–27 (Jan. 20, 1994). The enforcement proceeding complaint was filed by the Commission's Office of Unfair Import Investigations (OUII), and alleges violations of the Commission cease and desist order and modified cease and desist order issued in the underlying investigation against respondent Analog Devices, Inc. (Analog). The complaint sought appropriate sanctions for these alleged violations. The parties to the enforcement proceeding were OUII, represented by its investigative attorneys (IAs); enforcement proceeding respondent Analog; and Texas Instruments, Inc. (TI), the complainant in the underlying investigation.

On April 24, 1995, Analog filed a motion with the ALJ to terminate the enforcement proceedings based upon a settlement it had reached with TI. The IAs filed a response opposing the motion to terminate. The ALJ issued a recommended determination (RD) granted the motion to terminate, and the IAs petitioned the Commission for review of the RD. Analog opposed the petition.

On April 26, 1995, TI moved to terminate itself as a party to the enforcement proceeding in light of the settlement it had reached with Analog. Neither Analog nor the IAs opposed TI's motion. The ALJ issued an RD granting TI's motion. No party sought review of that RD.

The Commission adopted both Rds. However, it will refer to the Department of Justice the allegations by the IAs that Analog willfully submitted false and misleading reporting violations. See 18 U.S.C. § 1001.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 C.F.R. § 211.56 (1994).

Copies of the Commission Order and nonconfidential versions of the RDs and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: September 11, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–23909 Filed 9–17–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice.

DATE AND TIME: 9:30 a.m., Monday September 23, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeal to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 13, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–24011 Filed 9–16–96; 10:43 am]

BILLING CODE 4410–01–M

Sunshine Act Meeting

Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice.

TIME AND DATE: 1:30 p.m., Monday, September 23, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal for Modification of Transfer Treaty Regulation at 28 C.F.R. § 2.62(e) for short term offenders.
4. Proposal for Continuation of Expedited Revocation Project.
5. Proposal for Special Parole Condition Regarding Computer Use.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 13, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–24012 Filed 9–16–96; 10:43 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10034, et al.]

Proposed Exemptions; Dimensional Fund Advisors Inc. (DFA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's

interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Dimensional Fund Advisors Inc. (DFA) Located in Santa Monica, California

Application No. D–10034]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed in-kind transfers of the assets of employee benefit plans (the Client Plans) for which DFA or an affiliate act as a fiduciary [1] and which are held in DFA sponsored group trusts (the Group Trusts) to the DFA Investment Trust Company (the Master Fund), in exchange for the shares of the Master Fund, an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which DFA acts as investment advisor; provided that the following conditions are satisfied:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive advance written notice of the in-kind transfer of the Client Plan's assets held in a subtrust of a Group Trust to a corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund, and will receive full written disclosures concerning the Master Fund described in paragraph (c) of Section II below;

(b) On the basis of such information described in paragraph (c) of Section II below, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets from a subtrust of a Group Trust to the corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(c) No sales commissions, redemption fees or other fees are paid by the Client Plans in connection with the in-kind transfer of the Group Trust's assets, in exchange for the shares of the Master Fund;

(d) The transfers will be one-time transactions for each subtrust of a Group Trust for which a comparable series of the Master Fund exists;

(e) Each Group Trust receives shares of the Master Fund which have a total net asset value that is equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer;

(f) The current market value of the Group Trust's assets to be transferred in-kind in exchange for the shares of the Master Fund, is determined in a single valuation performed in the same manner at the close of the same business day with respect to any such transfer, using independent sources in accordance with the procedures set forth in Rule 17a–7 (Rule 17a–7) under the 1940 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by DFA pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sales price for transactions reported on a recognized securities exchange or NASDAQ, be valued based on the average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the day of the Group Trust transfer, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of DFA;

(g) No later than 30 days after completion of each in-kind transfer of Group Trust's assets to the Master Fund, DFA will send by regular mail to each Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation containing the following information:

1. the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the 1940 Act;

2. the price of each such security involved in the transaction; and

3. the identity of each pricing service or market maker consulted in determining the value of such securities;

(h) No later than 90 days after completion of each in-kind transfer of

[1] The applicant states that no retirement plan established by DFA is invested in any of the Group Trusts, and no relief is being requested herein on behalf of any of DFA's own plans. Accordingly, the Department is not proposing relief for in-kind transfers involving any plan established and maintained by DFA or its affiliates or subsidiaries.

the Group Trust's assets to the Master Fund, DFA will send by regular mail to the Second Fiduciary, who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III below, written confirmation that contains the following information:

1. the number of Group Trust's units held by the Client Plan immediately before the transfer (and the related per unit value and the total dollar amount of such Group Trust's units transferred); and

2. the number of shares in the Master Fund that are held by the Client Plan following the transfer (and the related per share net asset value and the total dollar amount of such shares received);

(i) The transferred securities will be valued using the same methodology in the Group Trusts and in the Master Fund;

(j) DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary of each affected Client Plan affirmatively consents to the in-kind transfer in writing; and

(k) There will be no penalty to a Client Plan for not participating in the in-kind transfer.

Section II—General Conditions

(a) DFA maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DFA, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than DFA shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) of Section II shall be authorized to examine trade secrets of DFA, or commercial or financial information which is privileged or confidential; and

(c) A Second Fiduciary who is acting on behalf of a Client Plan and who is independent and unrelated to DFA, as defined in paragraph (g) of Section III below, will receive in advance of the investment by a Client Plan in the Master Fund full written disclosure of information concerning the Master Fund which shall include, but not be limited to the following:

(1) A current copy of SEC Form N–1A (regarding the registration of an open end investment company under the 1940 Act)[2] with respect to the Master Fund, plus certain additional information as specified in the Advisory Opinion 94–35A[3];

(2) A table listing management fees for the most recent completed fiscal period, all other expenses broken down by category and total portfolio operating expenses;

(3) A chart showing the effect of such fees on an investment in the Master Fund over one, three, five and ten years; and

(4) A list of per share income and capital changes for shares outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses) on securities; distributions from net realized gains (losses) on securities; net increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''DFA'' means Dimensional Fund Advisors Inc., and any affiliate thereof as defined below in paragraph (b) of this section.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the DFA Investment Trust Company, such additional series as may be added to the DFA Investment Trust Company, or any other diversified open-end investment company or companies registered under the 1940 Act for which DFA serves as an investment advisor and may also serve as a custodian, shareholder servicing agent, or transfer agent.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's SEC Form N–1A and statement of additional information, and other assets belonging to each of the portfolios in the Fund or the Fund, less the liabilities charged to each such portfolio or the Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to DFA. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to DFA if:

[2] Form N–1A requires the registrant to answer a series of questions regarding financial information, management of the fund, risk factors and expenses.

[3] In the Advisory Opinion 94–35A (AO 94–35A) issued by the Department to DFA, DFA requested an advisory opinion with regard to certain disclosures required by the Securities Act of 1933 (the 1933 Act), and which are provided by DFA to independent plan fiduciaries in connection with the plans' investment in a certain open-end investment company to which DFA serves as an investment advisor (the Core Fund), and which is registered under the 1940 Act, but not under the 1933 Act. Specifically, DFA requested an advisory opinion that a receipt by the independent plan fiduciary of the Core Fund's Form N–1A and the additional information as specified in AO 94–35A complies with the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4. In AO 94–35A, the Department stated that the disclosure of the Core Fund's Form N–1A information and the additional information as specified in AO 94–35A to an independent plan fiduciary, in lieu of a prospectus, will satisfy the prospectus disclosure requirement of paragraph (d) of section II of PTCE 77–4, provided that the additional information as specified in AO 94–35A contains all the information, otherwise included in a prospectus, that is relevant to the independent fiduciary's decision as to whether to approve the purchase and sale of shares in the Core Fund.

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with DFA;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of DFA (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner or employee of DFA (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment manager advisor, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Section I above, then paragraph (g)(2) of this Section III shall not apply.

Summary of Facts and Representations

1. DFA is a registered investment advisor under the Investment Advisors Act of 1940. DFA was organized in May 1981, and is engaged in the business of providing investment management services to institutional investors (including pension and profit sharing plans, endowment funds and governmental agencies). As of February 1, 1995, DFA had approximately $10.5 billion in assets under management, of which approximately $4.969 billion were held in the Group Trusts. DFA currently sponsors three tax-exempt Group Trusts qualified under Revenue Ruling 81–100. The Group Trusts hold assets of the Client Plans for which DFA serves as a fiduciary and an investment manager as defined in section 3(38) of the Act. Approximately $3.7 billion, or 74 percent of the Group Trusts assets are ERISA Client Plan assets.

2. DFA has full investment authority for the Group Trusts, which are divided into various subtrusts, each with a distinct investment objective and strategy. DFA represents that it does not receive any fees from the Group Trusts. The initial decision and authorization to participate in a subtrust of a Group Trust is made by the Second Fiduciary of each Client Plan. A Client Plan which invests in the Group Trust then negotiates an investment management agreement with DFA, which specifies the types and amounts of services performed for such Client Plan, under which the Client Plan pays DFA an investment management fee.[4]

3. As of January 31, 1995, the Group Trusts held investments of thirty-eight (38) Client Plans. Of these Client Plans, 2 have invested more than $500 million; 7 have invested between $100 million and $500 million; 10 have invested between $50 million and $100 million; 7 have invested between $25 million and $50 million; and 12 have invested between $1.113 million and $25 million. It is represented that the investor Client Plans range in size from $57 million to $45 billion.

4. DFA also serves as the investment advisor to the DFA Investment Trust Company (the DFA Investment Trust Company), a diversified, open-end management investment company organized as a Delaware business trust on October 27, 1992, and registered under the 1940 Act. The DFA Investment Trust Company is currently comprised of seven series, each of which operates as a diversified investment company and represents a separate class of the DFA Investment Trust Company shares of beneficial interest. Each of the series has specific investment objectives, policies and investment limitations. DFA represents that in the future it may add additional series to the DFA Investment Trust Company, or create similar open-end management investment companies (collectively; the Master Fund).

Currently, these series are: the U.S. 6–10 Small Company Series, the U.S. Large Company Series, the DFA One-Year Fixed Income Series, U.S. Small Cap Value Series, the U.S. Large Cap Value Series, the DFA International Value Series and the Emerging Market Series. DFA serves as investment advisor to each of the series, and it manages the investment and reinvestment of the series' assets.

5. The shares of the Master Fund are sold only to the DFA sponsored investment companies, to DFA sponsored group trusts, to separately managed accounts forming a part of qualified plans, and to other large institutional investors. The Master Fund is valued in accordance with regulations issued by the Securities and Exchange Commission (SEC) for valuing mutual capital under the 1940 Act. The applicant represents that, as required under the 1940 Act, the fees for the Master Fund are set at the series level, and must be charged with respect to all assets invested in such series. The Master Fund, however, does not impose a fee under the SEC Rule 12b–1.

6. It is represented that the Master Fund is the master of the master-and-feeder arrangement. The master is an open-end management investment company registered under the 1940 Act in which the feeders purchase shares. The feeders include other open-end investment companies, collective investment vehicles (such as the Group Trusts), and/or other large institutional investors. A master-and-feeder arrangement exists where multiple investment vehicles and institutional investors with identical investment objectives pool their assets by investing in a single investment company having the same investment objective. This arrangement enables the feeder funds which invest in the Master Fund to spread the fixed costs of portfolio management and fund administration over a greater number of investment dollars and to achieve economies of scale. DFA represents that it is in the interest of the Client Plans to utilize the master-and-feeder arrangement.

The investment management fees at the master level reflect only the costs of investing the assets in the Master Fund. Other fees are paid at the feeder level. At the feeder level a client enters into an investment management agreement (IMA) with DFA. Pursuant to the terms of IMA, the types and amounts of services performed for each client are individually negotiated with such client. Once the assets are invested in the Master Fund, the net fee at the feeder level will be determined by subtracting from each client's gross fee under the IMA that client's pro rata share of the investment advisory fee paid by the Master Fund.[5] DFA states that this fee arrangement would be covered by the Prohibited Transaction Class Exemption 77–4 (42 FR 18732, April 8, 1977) (PTCE 77–4).[6]

[4] The Department expresses no opinion as to whether the provision of services by DFA or its affiliates to the Client Plans satisfies the requirements for statutory exemption, as set forth in section 408(b)(2) of the Act and 29 CFR 2550.408(b)(2) of the Department's regulation. To the extent that such provision of services to the Client Plans by DFA or its affiliates does not satisfy the requirements of section 408(b)(2) of the Act, the Department, herein, is offering no relief.

[5] In this regard, DFA submitted the following example. XYZ company pension plan signs an IMA under which it agrees to pay DFA 60 basis points for all services provided under the IMA. DFA invests the XYZ pension plan assets in the Master Fund, which has an investment advisory fee of 40 basis points. In accordance with PTCE 77–4, DFA will offset the 40 basis point investment advisory fee at the Master Fund level from the 60 basis point fee at the group trust or feeder level. The XYZ pension plan will pay DFA 20 basis points under the IMA with respect to the assets invested in the Master Fund.

[6] PTCE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment

7. Accordingly, DFA is requesting an exemption to permit the in-kind transfer of the Client Plans' assets held in the subtrusts of the Group Trusts to the corresponding series of the Master Fund in exchange for the shares of the Master Fund. DFA represents that these transfers would otherwise comply with the PTCE 77–4 as interpreted by the advisory opinions issued by the Department, except for the fact that the transfers will be in-kind.[7] In accordance with PTCE 77–4, the investment management, investment advisory or similar fees generated at the Master Fund level will directly offset the plan level fees with respect to the Client Plans' assets invested in the Master Fund.

8. A Second Fiduciary who is independent of DFA will be provided with advance written notice of the transfer and full written disclosure concerning the Master Fund, including a current copy of SEC Form N–1A (regarding the registration of an open end investment company under the 1940 Act) with respect to the Master Fund, plus the additional information as specified in AO 94–35A which shall include but not be limited to the following: (1) A table listing management fees for the most recent completed fiscal period, all other expenses broken down by category and total portfolio operating expenses; (2) a chart showing the effect of such fees on an investment in the Fund over one, three, five and ten years; and (3) a list of per share income and capital changes for a share outstanding throughout the year, including investment income, expenses, net investment income, dividends from net investment income, net realized and unrealized gains (losses) on securities; distributions from net realized gains (losses) on securities; increase (decrease) in net asset value, net asset value at the beginning of the period, net asset value at the end of the period, expenses to average net assets, portfolio turnover rate, and number of shares outstanding at the end of the period. On the basis of such information, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets in the Group Trust to the Master Fund in exchange for the shares of the Master Fund.

9. DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary affirmatively consents to the transfer. Also, no sales commissions or other fees will be paid by the Client Plans in connection with the purchase of the Master Fund's shares through an in-kind transfer of the Group Trust's assets. The transfers will be one-time transactions between subtrusts of the Group Trusts and series of the Master Fund that have the same investment objectives. Furthermore, the transferred securities will be valued at the time of the transfer using the same methodology in the subtrust of the Group Trust as in the Master Fund's corresponding series.

10. DFA represents that valuation of assets transferred in-kind to the Master Fund will be established by reference to independent sources. All assets transferred in-kind will be valued in accordance with Rule 17a–7[8] under the 1940 Act, as amended from time to time or any successor rule, regulation or similar pronouncement, and the procedures established by DFA pursuant to Rule 17a–7 for the valuation of such assets. Such procedures require that all securities for which a current market price cannot be obtained by reference to the last sale price on a recognized securities exchange or NASDAQ, will be valued on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the business day preceding the transfer, determined on the basis of reasonable inquiry from at least three sources that are broker dealers or pricing services independent of DFA.

Further, DFA represents that not later than 30 days after completion of the in-kind transfers it will send by regular mail to each affected Client Plan, written confirmation of the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4), the price of each such security involved in the transaction; and the identity of each pricing service or market maker consulted in determining the value of such securities. The securities subject to valuation under Rule 17(a)–7(b)(4) include all securities other than ''reported securities'', as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934, or those quoted on the NASDAQ system or for which the principal market is an exchange.

Each Group Trust will receive shares of the Master Fund that have a total net asset value equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer, based on the current market value of the Group Trust's assets as determined in a single valuation also performed in the same manner at the close of the same business day.

In addition, no later than 90 days after completion of each in-kind transfer, DFA will send by regular mail to the Second Fiduciary written confirmation of the number of Group Trust's units held by the Client Plan immediately before the transfer (and the related per unit value and the total dollar amount of such Group Trust's units transferred), and the number of shares in the Master Fund that are held by the Client Plan following the transfer (and the related per share net asset value and the total dollar amount of such shares received).

11. With respect to ongoing disclosure, DFA will, as necessary, and in accordance with requirements of the 1940 Act, provide Client Plans with updated copies of SEC Form N1–A with respect to the Master Fund. DFA will also update, as necessary, additional information identified in AO 94–35A, which is provided by DFA to its Client Plans.

12. DFA represents that the proposed transfers are in the interest and protective of the Client Plans. No sales commissions or other fees will be paid by the Client Plans in connection with the purchase of the Master Fund's shares through an in-kind transfer of the Group Trust's assets. Furthermore, to the extent that it is not possible for DFA to determine a price for a particular security pursuant to Rule 17(a)–7, such security will remain in the Group Trust. In structuring the transactions as described herein, DFA will eliminate

---

company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTCE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

The Department notes that fees for services other than investment advisory services (i.e., secondary services such as administrative services) may be received by an investment advisor or its affiliate, provided that the conditions of PTCE 77–4 are met. (See the Advisory Opinions 93–12A and 93–13A issued by the Department).

[7] In this regard, the Department is of the view that the relief provided by PTCE 77–4 is unavailable for the purchase and sale of shares in mutual funds other than for cash. (See Advisory Opinion 94–35A issued by the Department).

[8] Rule 17a–7 permits transactions between investment funds that use the same investment advisor, subject to certain conditions. Rule 17a–7(b) requires, among other things, that such transactions be effected at the ''independent current market price'' for each security, involve only securities for which market quotations are readily available, involve no brokerage commissions or other renumeration, and comply with valuation procedures adopted by the board of directors of the investment company to ensure that all requirements of the Rule are satisfied.

commission costs, market maker's spread and any potential for adverse market impact. The savings from in-kind purchases would directly benefit the Group Trusts and the Client Plans that participate in them. DFA also maintains that there will be no penalty to a Client Plan for not participating in the in-kind transfer. If a Client Plan chooses not to participate in the transfer, DFA has the option of not transferring any assets from a particular subtrust of the Group Trust as long as that Client Plan remains in that subtrust. DFA may also segregate the Client Plan's proportionate share of Group Trust's assets into a separate subtrust, and then transfer the remaining assets to the Master Fund.

13. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) No sales commissions, redemption fees or other fees are paid by the Client Plans in connection with the in-kind transfer of Group Trust's assets in exchange for the shares of the Master Fund;

(b) A Second Fiduciary who is acting on behalf of each affected Client Plan and who is independent of and unrelated to DFA, as defined in paragraph (g) of Section III, receives advance written notice of the in-kind transfer of the Group Trust's assets and the disclosures described in paragraph (c) of Section II;

(c) No later than 30 days after completion of each in-kind transfer of Group Trust's assets to the Master Fund, the Second Fiduciaries for affected Client Plans will receive written confirmation of the identity of each security that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4), the price of each such security, and the identity of the pricing service or market maker consulted;

(d) No later than 90 days after completion of each in-kind transfer of the Group Trust's assets to the Master Fund, DFA will mail to the Second Fiduciary a written confirmation of the number of Group Trust's units held by each affected Client Plan immediately before the transfer (and the related per unit value and the aggregate dollar value of such Group Trust's units transferred), and the number of shares in the Master Fund that are held by each affected Client Plan following the transfer (and the related per share net asset value and the aggregate dollar value of such shares received);

(e) Each Group Trust will receive shares of the Master Fund that are equal to the value of the Client Plans' all or pro rata share of the Group Trust's assets on the date of the transfer, as determined in a single valuation performed in the same manner at the close of the same business day with respect to any such transfer, in accordance with the procedures set forth in Rule 17a–7 under the 1940 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement;

(f) On the basis of such information described in paragraph (c) of Section II, the Second Fiduciary will authorize in writing the in-kind transfer of the Client Plan's assets held in the subtrust of the Group Trust to the corresponding series of the Master Fund in exchange for the shares of the Master Fund, and the investment of such assets in the corresponding series of the Master Fund. Such authorization is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(g) DFA will not execute an in-kind transfer of the Client Plan's assets unless the Second Fiduciary of each affected Client Plan affirmatively consents to the in-kind transfer in writing;

(h) The transfers will be one-time transactions for each subtrust of a Group Trust for which a comparable series of a Master Fund exists; and

(i) there will be no penalty to a Client Plan for not participating in the in-kind transfer.

Notice to Interested Persons

DFA represents that it will distribute by first class mail a copy of the notice of pendency of this proposed exemption (the Notice) within fifteen (15) days of the date of such Notice in the Federal Register to the fiduciaries of any of the Client Plans which are invested in any of the Group Trusts on the date of publication of such Notice in the Federal Register. The distribution to interested persons shall include a copy of the Notice as published in the Federal Register and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. DFA also will provide a copy of the proposed exemption and/or a copy of the final exemption, if granted, to any Second Fiduciary of a Client Plan upon request. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

First National Bank of Anchorage Common Trust Fund (the Fund) Located in Anchorage, Alaska

[Application No. D–10117]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the prospective sales of certain defaulted real estate mortgages (the Mortgages) by the First National Bank of Anchorage Common Trust Fund (the Fund) to the First National Bank of Anchorage (the Bank), a party in interest with respect to the Fund, provided that the following conditions are satisfied:

(1) The sales will be one-time cash transactions;

(2) the Fund will incur no costs in connection with the sales;

(3) the Fund will sell each Mortgage for the greater of fair market value, or its outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) the independent fiduciaries (the Independent Fiduciaries) appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(5) neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(6) the Mortgages will be purchased, rather than segregated, by the Bank;

(7) the borrowers on the Mortgages will be unrelated third parties;

(8) the conditions of the Prohibited Transaction Exemption 90–60 (PTE 90–60) have been met. PTE 90–60, which expired September 12, 1995, provided retroactive and prospective relief for sales of the Mortgages by the Fund to the Bank;

(9) the Bank maintains for a period of six years, the records necessary to enable persons described in (10) below to determine whether the conditions of this proposed exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(10) (i) Except as provided in paragraph (ii) of this subsection (10) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (9) above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in the Fund, who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in the Fund, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in the Fund, or any duly authorized employee or representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (B) through (D) of this subsection (10) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Summary of the Facts and Representations

1. The First National Bank of Anchorage (the Bank) is a bank organized in the state of Alaska, and it provides banking and trust services. The Bank is subject to periodic examinations by the Comptroller of the Currency. The Bank's principal business offices are located at 646 West Fourth Avenue in Anchorage, Alaska, and the Bank maintains 27 banking locations within this geographic area.

2. The Fund is a common trust fund established by the Bank on November 2, 1965. The Fund is established pursuant to the Comptroller of Currency Regulations section 9.18(a)(1) (OCC Regulations), and contains assets of participating estates, trusts, and employee benefit plans (the Participating Trusts). Current investors in the Fund include three defined contribution profit sharing plans. The Trust Committee of the Bank (the Trust Committee) has investment discretion with respect to the Fund. The Bank is the sponsor and fiduciary of the Fund.

The Fund is maintained in accordance with the rules and regulations of the Comptroller of Currency. As required by the regulations, the Fund performs annual internal audits. Also, the Fund is valued quarterly and audited annually by an independent accounting firm. For the 1996 Fund year, KPMG Peat Marwick will perform the quarterly valuations and the annual audit of the Fund. The Fund is also subject to periodic audits by the Comptroller of Currency.

3. The Bank was granted an individual exemption by the Department in 1990 (PTE 90–60), for the past and prospective sales of certain defaulted real estate mortgages (the Mortgages) by the Fund in which the Participating Trusts invest, to the Bank, a party in interest with respect to the Fund. PTE 90–60 provided retroactive relief as of August 5, 1980, and remained effective for a five year period from September 12, 1990, which was the date the final grant appeared in the Federal Register. PTE 90–60 expired September 12, 1995. The applicant represents that the prospective portion of PTE 90–60 was never used by the Bank. With respect to the prospective transactions entered into after September 30, 1988, PTE 90–60 contained conditions that were substantially similar to those proposed herein.

4. The Fund was established by the Bank to collectively invest and reinvest monies received by the Bank in its capacity as fiduciary and trustee of estates, trusts and retirement plans. As authorized by the OCC Regulations, the Fund also invests in first mortgage loans which were originated by the Fund and secured by real property. The borrowers on the Mortgages are independent third parties unrelated to the Bank and the Plans investing in the Fund. Occasionally, some Mortgages go into default. However, over the preceding five years, no Mortgages have gone into default. The Fund currently contains one Mortgage which is not in default. The applicant represents that any Mortgages in default would represent a small percentage of the net asset value of the Fund, which as of June 30, 1995 was $7,443,065. In this regard, approximately 20% of the participation interests in the Fund are owned by the Participating Trusts.

5. The applicant represents that under OCC Regulations, the Bank has two alternative methods to protect the Fund when a Mortgage owned by the Fund goes into default. The Bank may either segregate the defaulted Mortgages from the remainder of the Fund or it may purchase such Mortgages thereby permitting the Fund to reinvest the proceeds. The OCC Regulations section 9.18(b)(7)(ii) specifies that a segregated investment shall be administered separately, realizing its own separate gains and losses, pro-rata, with regard to all participants in the Fund. Accordingly, the applicant represents that because each segregated account bears its own costs and realizes its own income, and except for borrowings, cannot receive any further investment in the account, it is possible that liquidating an account for a defaulted investment would mean significant losses to such account, and the final proceeds of the liquidating account would be significantly less than the value of the assets prior to segregation.

However, in the case of the Bank purchasing a mortgage, the OCC Regulations section 9.18(b)(8)(ii) state that:

''Any bank administering a collective investment fund may purchase for its own account from such fund any defaulted fixed income investment held by such fund, if in the judgement of the board of directors the cost of segregation of such investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank elects to so purchase such investment, it must do so at its market value or the sum of the costs (i.e., outstanding principal plus accrued unpaid interest, and penalty charges, whichever is greater.'' The time period available for a decision with respect to either segregation or purchase of a mortgage is 60 days when the required payment was not received.

6. The Bank will purchase defaulted Mortgages from the Fund for the outstanding principal balance, plus accrued but unpaid interest and penalty charges. As stated in the Summary of the Facts and Representations of the notice preceding PTE 90–60 (the Summary), the Board of Directors of the Bank (the Board of Directors) determined that this practice is a superior alternative to segregation because the costs of retaining and segregating the mortgages are substantial. If the Fund were to retain and segregate the Mortgages under the OCC Regulations, it would, as owner of the Mortgages, incur the costs of foreclosure in order to realize on the collateral of a mortgage loan. Pursuant to the retroactive relief provided under PTE 90–60, the Bank has in the past

purchased defaulted Mortgages from the Fund for outstanding principal balance, plus accrued interest and penalty charges at the time of the purchase.

7. With respect to any prospective purchases of the Mortgages, the Bank obtained determinations of value from an independent appraiser and from a business advisor, who also have rendered their opinions under PTE 90–60. The first determination of value is rendered by Kenneth C. Hume, who is an independent business advisor in the state of Alaska, and a former president of the Alaska State Bank. Mr. Hume was also employed as an assistant vice president with the Bank of California, and a regional vice president with the First National Bank of Oregon (First Interstate), and therefore has experience with transactions involving a bank and its trust department. Mr. Hume concluded on March 5, 1996, that the ''upper limit'' of a fair market value of a mortgage in default would be the outstanding principal balance plus accrued interest, insurance, taxes, and penalties. Mr. Hume also stated that it is in the interest of the Fund to sell the defaulted mortgages and reinvest these proceeds.

8. A second determination of value, dated April 23, 1996, was prepared by David T. McCabe, an independent, qualified real estate appraiser, who has experience as an arbitrator and a general partner with the Alaska Mortgage Group. Mr. McCabe stated that the ''upper limit'' of the fair market value of a mortgage in default is the outstanding principal balance plus accrued but unpaid interest and penalties. Mr. McCabe also stated that it is in the interest of the Fund to sell the defaulted mortgages and reinvest these proceeds.

9. The purchases of defaulted Mortgages will be one-time cash transactions for the greater of fair market value, or the outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale. A decision as to the ''default'' status of a mortgage will be made by the Trust Committee in accordance with the Comptroller's Handbook for National Trust Examiners, Precedents and Opinions for Collective Investment Funds, section 9.5740. This section specifies that: ''Any mortgage which is in default for a period of 60 days or more should be removed from the fund before admissions or withdrawals are made. * * * If the loan is not made current before two valuation dates occur (i.e., 60 days), it should be removed from the account. Within this limitation, the trust investment committee could properly be given discretionary authority as to the segregation or sale of such defaulted mortgages.'' After the Trust Committee informs the Board of Directors regarding default of a Mortgage, the Board of Directors makes the decision to purchase the defaulted Mortgage. As was permitted by PTE 90–60, in the past the Bank has always purchased, rather then segregated, the Mortgages.

10. The applicant represents that the Bank's prospective purchases of the Mortgages will continue to be desirable for the Fund. Segregation of a defaulted Mortgage is not a viable alternative because the high costs of segregation are ultimately detrimental to the Fund. These costs would be imposed upon the segregated mortgage assets alone, thereby reducing the amounts ultimately disbursed to the Participating Trusts in the Fund when the segregated accounts are liquidated, after foreclosure. In addition to the foreclosure costs, the Fund would sustain the loss of additional accounting and administrative expenses incurred in the segregation of the Mortgages into ''liquidating accounts'' in the Fund. The likely consequence of segregation is that the final proceeds of the liquidating account available for distribution to the Participating Trusts in the Fund will be significantly less than the value of the assets prior to segregation. In this regard, the applicant represents that the Mortgages will always be purchased, rather than segregated, by the Bank.

11. The applicant also appointed Mr. Hume and Mr. McCabe as the Independent Fiduciaries to monitor prospective purchases of the Mortgages by the Bank.[9] In this regard, Mr. McCabe and Mr. Hume represent that they accept the fiduciary duties and liability set forth in section 404 of the Act regarding fiduciary duties. With respect to the prospective transactions described herein, Mr. McCabe and Mr. Hume will review and determine that a Mortgage is in default, has been properly declared in default by the Bank in accordance with the OCC Regulations, and that the sale of a Mortgage is in the best interest of the Fund. Neither Independent Fiduciary will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein. The applicant represents that it is probable, given the nature and the scope of the Bank's business and the size of the city of Anchorage, that Mr. McCabe and Mr. Hume had a borrower/lender relationship with the Bank in the past five years. However, this relationship was *de minimus* and would not affect their independent judgement as the Independent Fiduciaries.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The sales will be one-time cash transactions;

(2) the Fund will incur no costs in connection with the sales;

(3) the Fund will sell each Mortgage for the greater of fair market value, or its outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) two Independent Fiduciaries appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(5) neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(6) the Mortgages will be purchased, rather than segregated, by the Bank;

(7) the conditions of the Prohibited Transaction Exemption 90–60 (PTE 90–60) have been met. PTE 90–60, which expired September 12, 1995, provided retroactive and prospective relief for sales of the Mortgages by the Fund to the Bank; and

(8) the borrowers on the Mortgages will be unrelated third parties.

Notice to Interested Persons

The applicant maintains that parties who may be interested in the pendency of this requested exemption include plan administrators of the plans participating in the Fund. It is represented that within ten (10) days of the date of publication of the notice of proposed exemption (the Notice) in the Federal Register, notification to interested parties will be provided by first class mail or by delivery. Such notification will include a copy of the Notice, as published in the Federal Register, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested parties of their right to comment or

[9] The applicant states that the purpose of having two Independent Fiduciaries is to provide at least one source of independent review, in the event that one of the Independent Fiduciaries is not available at the time when a mortgage must be declared in default by the Bank.

request a hearing within a time period specified in the notification.

For Further Information Contact: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

HSBC Securities, Inc. (HSBC) Located in New York, New York

[Application No. D–10316]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[10]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[11] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[12]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded

[10] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[11] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[12] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which HSBC is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) HSBC;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with HSBC; or

(3) any member of an underwriting syndicate or selling group of which HSBC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the

foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) which is secured by equipment which is leased;

(2) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) the trust holds a security interest in the lease;

(2) the trust holds a security interest in the leased motor vehicle; and

(3) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

1. HSBC is a New York-based international banking and financial services organization. HSBC is a 100% indirect subsidiary of HSBC Holdings plc (Holdings), a multi-bank holding company registered under the Bank Holding Company Act of 1956, as amended, and the rules and regulations thereunder. Holdings is the largest bank in the world ranked by shareholders' equity. HSBC was incorporated on December 12, 1969, as Carroll, McEntee & Co. (with the current name adopted on April 11, 1994). HSBC provides a wide range of commercial and retail banking and trust services. HSBC [13] also provides various other financial services, including commercial banking, merchant banking, and capital holding markets services.

Together with its affiliates, HSBC is a financial services organization servicing the financial needs of individuals, businesses, governments and financial institutions. As to the capital markets, HSBC engages in securities transactions as both principal and agent and provides underwriting, research and other financial services. HSBC is actively involved in the issuance and trading of corporate debt and other fixed-income securities (including mortgage and asset-backed securities), U.S. government securities and equity securities.

HSBC represents that it has the legal authority to underwrite asset-backed securities. By order dated February 20, 1996, the Board of Governors of the Federal Reserve granted HSBC the power to underwrite and deal in residential mortgage-related and consumer-receivable related securities and all types of debt securities, including securities issued by a trust, partnership, limited liability company or other vehicle secured by or

[13] For purposes of this exemption, ''HSBC'' shall include HSBC and its affiliates, except where the context otherwise requires.

representing interests in debt obligations (such as asset-backed securities). In each case, HSBC's power to so underwrite and deal is subject to a framework of structural and operating limitations set forth in the applicable order, including a condition that it does not derive more than a certain percentage of its gross revenues from such activities.

Trust Assets

2. HSBC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [14] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[15]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mort gages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[16]

[14] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. HSBC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, HSBC has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[15] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[16] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. HSBC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by HSBC on a firm commitment basis. In addition, HSBC anticipates that it may privately place certificates on both a firm commitment and an agency basis. HSBC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. HSBC requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/ slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[17]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for

[17] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[18]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to HSBC, the trust sponsor or the servicer. HSBC represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to HSBC. In other cases, however, HSBC may originate or service receivables included in a trust, may sponsor a trust and/or may underwrite certificates.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

[18] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[19] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that

[19] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificate holders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by HSBC in connection with the offering of any certificates, but HSBC may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and HSBC may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is HSBC's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. HSBC anticipates that it will make a market in certificates.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which HSBC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) HSBC anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and

information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[20]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

HSBC represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[21] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[22] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, HSBC represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. HSBC represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, HSBC represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

NOTICE TO INTERESTED PERSONS: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 13th day of September, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–23926 Filed 9–17–96; 8:45 am]

BILLING CODE 4510–29–P

[20] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[21] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which First Union or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[22] The applicant represents that where a trust sponsor is an affiliate of HSBC, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if HSBC is not a fiduciary with respect to plan assets to be invested in certificates.

[Prohibited Transaction Exemption 96–69; Exemption Application No. D–10189, et al.]

Grant of Individual Exemptions; Westinghouse Savannah River Company/Bechtel Savannah River, Inc. Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Westinghouse Savannah River Company/Bechtel Savannah River, Inc. Pension Plan (the Plan), Located in Aiken, South Carolina

[Prohibited Transaction Exemption 96–69; Exemption Application No. D–10189]

Exemption

The restrictions of section 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code shall not apply,[1] effective October 15, 1994, to the past and future use by the U. S. Department of Energy (DOE)[2], acting on behalf of Westinghouse Savannah River Company (WSRC) and Bechtel Savannah River, Inc. (BSRI), parties in interest with respect to the Plan, of portions of DOE's interest in Group Annuity Contract GR–409 (GR–409) issued by Connecticut General Life Insurance Company (CGLIC), an insurance company headquartered in Hartford, Connecticut, to purchase interests for the Plan in CGLIC Group Annuity Contract IN–16111 (IN–16111) for the purpose of funding the benefits under the Plan; provided that:

(1) The use by DOE, acting on behalf of WSRC and BSRI, of portions of DOE's interests in GR–409 to purchase additional interests in IN–16111 on behalf of the Plan has benefited and will benefit the Plan to the same extent, as contributions of cash by DOE to such Plan;

(2) The fair market value of the debits to GR–409 that have occurred or will occur, as a result of the use of portions of GR–409 by DOE to purchase additional interest in IN–16111 on behalf of the Plan, has exactly matched and will exactly match the fair market value of the credits to IN–16111 acquired by the Plan as a result of such purchase transactions;

(3) The Plan has received and will receive interests in IN–16111 that have a fair market value equal to the fair market value of the interests the Plan would have received had DOE or WSRC acquired additional interests in IN–16111 for the Plan for cash;

(4) The value of the expected earnings received by the Plan from the interests in IN–16111 purchased by DOE with portions of GR–409 has been and will be the same, as if those interests were or are purchased with cash;

(5) The named fiduciary of the Plan has determined that the transactions have been and will be prudent, feasible, and in the interest of and protective of the Plan;

(6) CGLIC, an independent, qualified third party, has determined and will continue to determine the fair market value of the interests in GR–409, as of the date of each purchase transaction;

(7) The actuary for the Plan has determined and will continue to determine the minimum funding requirement of the Plan and has determined and will continue to determine the extent to which the amount credited to the Plan's funding standard account by virtue of the use of the interest in GR–409 satisfies the minimum funding requirement;

(8) The actuary of the Plan has monitored and will continue to monitor the transactions on behalf of the Plan, as well as the terms and conditions of the exemption at all times;

(9) No more than 25% of the assets of the Plan has been or will be involved in the transactions;

(10) The Plan has not, nor will the Plan in the future, incur any fees, costs, or other charges or expenses as a result of the transactions; and

(11) If, by the required filing date of the Form 5500 (including extensions) for any year, the aggregate book value[3] of the interests in IN–16111 purchased for the Plan is less than the aggregate amount credited to the Plan's funding standard account as a result of such purchases, DOE will (by the filing date of the Form 5500 for such year) purchase an additional interest in IN–16111 for the Plan that has a book value equal to the shortfall or contribute to the Plan cash in the amount of such shortfall.

EFFECTIVE DATE: The exemption is effective, as of October 15, 1994, the date DOE first used, on behalf of WSRC and BSRI, portions of its interests in GR–409 to acquire additional interests in IN–16111 for the Plan.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by September 4, 1996.

The Department received 24 letters from interested persons commenting on the exemption. In addition, a number of interested persons telephoned the Department. These individuals were assisted with their questions by members of the staff of the Office of Exemption Determinations of the Department. With respect to all the written comments submitted by

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] References to DOE include, where applicable, DOE's predecessors, the Energy Research and Development Administration and the Atomic Energy Commission.

[3] It is represented that the book value of an annuity contract represents the amount contributed to such contract, plus accumulated interest credited to date, less amounts withdrawn from such contract. Fair market value, on the other hand, represents the market value of the general account assets in which a contract is deemed to be invested for accounting purposes.

interested persons, the Department forwarded copies to the applicants and requested that the applicants address the various concerns raised by the commentators in writing. In this regard, it is noted that the number of comments discussed below exceeds the total number of letters from commentators, because numerous letters contained more than one concern. A description of the comments and the applicants' responses are summarized below.

Sixteen (16) commentators neither opposed nor supported the proposed exemption. Rather, these commentators expressed a lack of understanding of the nature of the exemption and asked for a simple and brief explanation. In response to these commentators, the applicants state that, as permitted under the Act, WSRC has elected to satisfy its funding obligations with respect to the Plan over the next several years by permitting DOE to purchase, on behalf of WSRC, interests in a group annuity contract for the Plan. In this regard, the exemption would permit DOE to purchase such group annuity contract interests for the Plan with interests in another annuity contract owned by DOE, rather than with cash.

Other commentators opposed the exemption and raised questions and concerns regarding the transactions described in the Notice. The concerns expressed by these commentators generally related to: (a) The impact of the exemption on the benefits provided under the Plan; (b) the possible detrimental effect of the exemption on the funding of the Plan; and (c) the decline in the book value of IN–16111.

The following summarizes the applicants' responses to these concerns raised by commentators. With respect to (a) above, ten (10) commentators expressed concern that the exemption in some way would eliminate, diminish, or otherwise adversely affect the pensions payable under the Plan.

In response, the applicants state that the exemption pertains only to the funding of the Plan and does not change or affect in any way the pension benefits payable under the Plan. As a result, the applicants represent that the exemption will not affect a participant's eligibility to receive a pension benefit or the amount of pension benefit checks.

With respect to (b) above, nine (9) commentators expressed concern that the exemption would have a detrimental effect on the level of Plan funding or had other questions related to funding. In this regard, one of the commentators expressed a general concern that funding would be reduced. Another opposed the exemption because, ''it reduces the net worth of the fund by moving assets from one part of the plan to another and really does not provide payments into the plan.'' Two (2) commentators stated concerns that the contributed assets were riskier or could lose their value. Another commentator asked how the minimum funding would be determined. Another commentator expressed a belief that any surplus funding in the Plan should be preserved for the benefit of participants. In the opinion of that same commentator the transactions which are the subject of this exemption would reduce the Plan to the minimum legal funding level. Finally, a single commentator asked a number of questions related to the effect of the transactions on funding.

In response to these comments, the applicants state that the Act expressly permits the sponsor of a pension plan to satisfy its funding obligations to such plan by purchasing interests in one or more annuity contracts. In this regard, the applicants maintain that the exemption does not relate to whether WSRC may fund the Plan by purchasing interests in a group annuity contract instead of purchasing, for example stocks and bonds, but rather, relates to whether such purchases may be made using interests in another annuity contract owned by DOE.

The applicants state that the contributions which are the subject of this exemption are expected to increase, and are expected to maintain, the value of the assets of the Plan to the same extent as if the additional interests in the Plan's annuity contract had been purchased with cash. In this regard, the fair market value of each contribution will be determined by CGLIC, an independent third party. Further, Buck Consultants (Buck), the Plan's actuary, will ensure each year that such contributions satisfy the minimum funding requirements of the Plan.

With respect to the funding level of the Plan, the applicants represent that the Plan is well-funded, with the value of the current assets and receivables exceeding current liabilities by $73,846,957 as of the end of 1995, and the Plan's portfolio is well-diversified, with approximately 52 percent (52%) of the assets invested in a broad range of equity securities, 34 percent (34%) in IN–16111, 8 percent (8%) in a variety of fixed income securities, and 6 percent (6%) in cash and cash equivalents.

In addition, the applicants state that although there is no reason to expect that the subject transactions will endanger adequate funding of the Plan, additional safeguards exist for participants and beneficiaries under the Act. In this regard, if the value of the Plan's assets becomes inadequate to meet the liabilities of the Plan, WSRC and DOE would be required to contribute additional amounts to the extent necessary to pay all benefits.

With respect to (c) above, one commentator expressed concern that the book value of IN–16111 had decreased between 1990 and 1994. In addition, the same commentator alleged that in the past DuPont has refused to agree to a proposal similar to the one which is the subject of this exemption.

In response to these comments, the applicants explain that the book value of IN–16111 decreased between 1990 and 1994, because the Plan exercised its option to cash out approximately 16 percent (16%) of the value of that contract each year and reinvested the proceeds in equities and other assets. Furthermore, the applicants represent that the value of the remaining portion of IN–16111 has increased every year and has proven to be a sound investment for the Plan. In response to this commentator's other concern, the applicants represent that they are not aware of any similar transactions with respect to the Plan proposed in the past and rejected by DuPont.

In addition to the comments discussed above, the commentators requested answers to various questions. The questions and the applicants' answers are discussed in the paragraphs below.

First, at least one commentator asked why the Benefits Committee could not be the trustee for all funds. In answer to this question, the applicants state that the role of the Benefits Committee is to serve as the Plan Administrator and named fiduciary with respect to the Plan. The applicants maintain that NationsBank, as a financial institution with significant experience holding and managing assets for its clients, is better qualified to be the Plan's trustee than the Benefits Committee.

Second, a commentator suggested that the Department supervise all exempted transactions. In response, the applicant notes that it may not be administratively feasible for the Department to monitor transactions with respect to which a prohibited transaction exemption is granted. However, the exemption includes several safeguards to protect the Plan and its participants and beneficiaries. For example, CGLIC, an independent third party insurance company, will determine the fair market value of each contribution, ensuring that the contributions will be equal in value to the amount that otherwise would have been paid in cash. Further, Buck, the Plan's actuary, will ensure that the contributions satisfy the minimum

funding requirement of the Plan each year.

Third, another commentator questioned whether the comment period was of sufficient duration. In response to this question, the applicants state that as a general matter applicants for exemption are permitted fifteen (15) days after publication of a proposed exemption in the Federal Register to post and/or to mail the notice of such proposed exemption to all interested persons. Thereafter, all interested persons have not less than thirty (30) days to comment on the proposed exemption and, in certain circumstances, to request a hearing. With regard to the subject exemption, the applicants agreed to post and to mail the Notice more quickly, so that all interested persons would see or receive the Notice not later than thirty (30) days before the end of the comment period.

Fourth, a commentator asked what would happen if the exemption were denied. In response, the applicants state that if the exemption were denied, WSRC or DOE would be required to purchase the annuity interests with cash, to contribute cash directly to the Plan, or to fund the Plan under any other method permitted by the Act.

Seven (7) individual commentators requested a hearing with respect to the exemption. Most of these commentators appear to have requested a hearing because of their belief that the transaction would reduce their retirement benefits. In addition, several commentators requested a hearing but did not state a reason for such request.

In response the applicants believe that given the number of participants and beneficiaries receiving the Notice, the number of requests for hearing is *de minimis*. Moreover, the applicants maintain that none of the few requests for a hearing presents a compelling reason why a hearing should be held. Accordingly, the applicants suggest that a hearing would be counterproductive and unnecessary.

The Department has considered the concerns expressed by the individuals who have requested a hearing and the applicant's written response addressing such concerns. After consideration of the materials provided, the Department does not believe that any issues have been raised which would require the convening of a hearing.

In addition to comments, questions, and requests for hearing from commentators, the Department also received a comment letter, dated August 30, 1996, from the applicants. In this letter, the applicants requested certain modifications to the operant language of the exemption, as proposed, and certain amendments which, according to the applicants, should have been reflected in the language of the Summary of Facts and Representations (SFR), as published in the Notice in the Federal Register. The applicants' comments on the requested changes to the conditions of the exemption and some of the suggested changes to the SFR are discussed below in an order that corresponds to the appearance of the relevant language in the Notice. The Department acknowledges all other clarifications made by the applicant to the information contained in the SFR. For further information regarding the applicants' comments or other matters discussed herein, interested persons are encouraged to obtain a copy of the exemption application file (D–9915) which is available in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

In their comment letter, the applicants point out that, as described in their application for exemption, the Plan has acquired and will acquire interests in IN–16111 that are equal or greater in value to the additional interests the Plan would have received and will receive had DOE purchased the interests with cash. Because the value of an asset is equal to the present value of expected future returns, the value of the *expected* earnings stream from the transferred interests will be the same as from the interests DOE otherwise would have purchased with cash. However, because the general account assets underlying the interests purchased for the Plan have been and will be different than if the interests were or are purchased with cash, the applicants cannot guarantee that earnings have been and will be precisely the same as if the interests were or are purchased with cash. Accordingly, the applicants request that the language of condition 4, as set forth in the Notice in column 3 on page 40006, should be amended. In this regard, in the quotation below the changes requested by the applicants have been underlined. Accordingly, the amendment should read as follows: ''(4) the value of the *expected* earnings received by the Plan from the interests in IN–16111 purchased by DOE with portions of GR–409 *has* been and will be the same, as if those interests were or are purchased with cash.'' In addition, the applicants suggest that a conforming change also should have been made to similar language, as set forth in paragraph (d) of section 21 of the SFR in column 3 on page 40010 of the Notice. The Department concurs.

In addition to the change in the operant language of the exemption, the applicants suggest that the SFR should have reflected the following modifications in order to more accurately reflect the record. In this regard, the underlined words or phrases in the passages from the Notice, which are quoted below, contain the applicants' suggested additions to the language of the SFR. Where omissions or substitutions have occurred, the underlined words or phrases in the passages from the Notice, which are quoted below, reflect the applicants' requested changes to the language of the SFR. For the original wording of the SFR, please refer to the Notice, as published in the Federal Register. The Department concurs with all of the applicants' requested modifications to the SFR.

In their comment letter, the applicants expressed concern that the transactions which are the subject of this exemption may be viewed as direct transfers of interests in GR–409 to the Plan by DOE, on behalf of WSRC and BSRI. In order to clarify their position, the applicants requested amendment to the language, as reflected in section 14 of the SFR. Accordingly, the last sentence of the second paragraph of section 14 (column 2, page 40008 of the Notice) should have read: ''The applicants are concerned that these transactions may be viewed as contributions by DOE, on behalf of WSRC and BSRI, of interests in GR–409 *directly to the Plan or* in consideration of the purchase of interests in IN–16111 for the Plan.''

In the third sentence of the third paragraph of section 14 of the SFR, it is represented that on July 17, 1995, $4,323,800 of interests at book value in GR–409 were used as consideration to purchase additional interests in IN–16111 for the Plan. The applicants have clarified that the corresponding fair market value of such interests in GR–409 at that time was $4,365,598. Accordingly, the following footnote, ''The fair market value of the interest was $4,365,598,'' should have been inserted in the SFR in the third sentence of the third paragraph of section 14 (column 3, on page 40008 of the Notice).

In section 14 of the SFR, it is represented that if the exemption were granted, GR–409 would be exhausted over the next two (2) years (projected to be toward the end of 1997). However, in their comment the applicants indicate that GR–409 may not be exhausted until 1999. Accordingly, the first sentence of the fourth paragraph of section 14 (column 3, on page 40008 of the Notice)

should have read: ''DOE wishes to continue, over the next *three (3)* years until GR–409 is exhausted (projected to be towards the *beginning of 1999*), to use GR–409 to satisfy its obligations under the Prime Contract to reimburse WSRC for the cost of funding the Plan.''

The applicants have clarified that CGLIC is at all times obligated to pay retirement benefits provided under the Plans, rather than to the Plan. Accordingly, the second sentence of footnote 4 (column 3, on page 40008 of the Notice) should have read: ''Thus, CGLIC is at all times obligated to pay retirement benefits *provided under* the Plan, as contractholder of IN–16111, to the extent requested by the Trustee, up to an aggregate amount not to exceed the book value of IN–16111.''

In the first sentence of the first paragraph of section 15, it is represented that the applicants did not enter into the transactions knowing that such actions might be prohibited. The applicants maintain that a change in tense is necessary to this sentence in order to make that representation consistent with other representations in that same section. Accordingly, the first sentence of the first paragraph of section 15 (column 1, on page 40009 of the Notice) should have read: ''It is represented that neither DOE nor any of the parties on behalf of whom the exemption is sought participated in the past transactions knowing that such *were* prohibited under the Act or under the Code.''

In section 17 of the SFR, it is represented that the total percentage of the Plans assets anticipated to be involved in the transactions would be approximately 24 percent (24%). The applicants have clarified that, if the exemption is granted, no more than about 17 percent of the assets of the Plan will be invested in IN–16111, if the portion of IN–16111 that was transferred to the Plan on December 30, 1990 in the trust-to-trust transfer is ignored. Accordingly, the penultimate sentence of section 17 (column 3, on page 40009 of the Notice) should have read, ''In this regard, it is anticipated that future uses by DOE of portions of GR–409 will increase the total percentage of Plan assets *that have been or will be* involved in the transactions to approximately *17* percent (*17*%).'' Further, the applicants suggest that at the end of the sentence quoted above the following footnote should have been inserted, *''i.e., it is anticipated that no more than about 17 percent of the Plan's assets will be invested in IN–16111, disregarding the portion of IN–16111 that was transferred to the Plan on December 30, 1990, from the Du Pont Plan in a trust-to-trust transfer.''* In addition, the applicants suggest that a conforming change should also have been made in paragraph (i) of section 21 (column 3, on page 40010 of the Notice).

Accordingly, after giving full consideration to the record, including the comments by commentators and the comments and responses of the applicants, the Department has determined to grant the exemption, as described and amended herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on Wednesday, July 31, 1996 at 61 FR 40005.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.

Dillard's Marine & Sports Center, Inc. Profit Sharing Plan (the Plan), Located in Anderson, South Carolina

[Prohibited Transaction Exemption 96–70; Exemption Application No. D–10214]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $47,962.50 (the Loan) by the Plan from the individual account of Willard M. Dillard, Jr. to Dillard's Marine & Sports Center, Inc., the sponsoring employer of the Plan and a party in interest with respect to the Plan; provided that (1) The terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third-party at the time the Loan is consummated; (2) the Loan will at all times be secured by collateral having a value that exceeds 150 percent of its outstanding principal; (3) the Loan will be at all times less than 25 percent of the balance in the individual account maintained in the Plan for William M. Dillard, Jr.; and (4) an independent fiduciary will approve and monitor the transaction and take whatever actions are necessary to protect the interests of the Plan.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1996, at 61 FR 37926.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Normike Industries, Inc. Profit Sharing Plan (the Plan), Located in Plainville, Connecticut

[Prohibited Transaction Exemption 96–71; Exemption Application No. D–10239]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain improved real property located in Plainville, Connecticut to Norman and Diane Stoll (the Stolls), parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan incurs no costs or expenses related to the transaction;

(C) The Plan receives a cash purchase price for the Property in the amount of no less than the greater of (1) The Property's fair market value as of the date of the sale, or (2) $57,500;

(D) Before the transaction is consummated, the Plan has received rental payments of no less than the Property's fair market rental value for each month of the Plan's ownership of the Property in which the Property was occupied by Normike Industries, Inc. (the Employer), the sponsor of the Plan; and

(E) Within 60 days of the publication in the Federal Register of this Notice granting the exemption, the Employer makes final payment to the Internal Revenue Service of any remaining unpaid excise taxes which are applicable under section 4975(a) of the Code by reason of the Employer's lease of the Property from the Plan.

EFFECTIVE DATE: This exemption is effective as of August 20, 1996.

Written Comments

The Department received one written comment and no requests for a hearing with respect to the proposed exemption.

The comment was submitted by the Stolls, who requested that the exemption be effective as of August 20, 1996, the date on which the Stolls consummated the purchase of the Property from the Plan. The Stolls explain that they chose to proceed with the purchase transaction on that date in order to terminate as soon as possible the ongoing lease between the Plan and the Employer. Accordingly, the Department has determined to grant the exemption with an effective date of August 20, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 22, 1996 at 61 FR 37926.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mei Technology Corporation 401(k) Plan (the Plan), Located in Lexington, Massachusetts

[Prohibited Transaction Exemption 96–72; Exemption Application No. D–10281]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of Guaranteed Annuity Contract No. GA–7192, Certificate Nos. 0001–0004 (collectively, the GAC), issued by Mutual Benefit Life Insurance Company, by the Plan to Mei Technology, the sponsoring employer of the Plan and a party in interest with respect to the Plan; provided that (1) The Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale an amount that is equal to the book value of the GAC as of the date of the Sale, as specified in paragraph 5 of the notice of proposed exemption published on July 22, 1996, at FR 37931.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1996, at FR 37931.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne H. Cole of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 13th day of September, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–23927 Filed 9–17–96; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–250 AND 50–251]

Florida Power and Light Company, Turkey Point Unit 3 and Unit 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee or FPL), for operation of Turkey Point Units 3 and 4 (TP), respectively, located in Dade County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to increase allowed core power level from 2200 Megawatts thermal (MWt) to 2300 MWt which is approximately a 4.5 percent increase in rated core power.

The proposed action is in accordance with the licensee's application for amendment dated December 18, 1995, as supplemented on May 3, June 11, July 1, July 3, and August 22, 1996.

The Need for the Proposed Action

The proposed action is needed to allow the licensee to increase the electrical output of each Turkey Point unit by approximately 30 MWe and thus provide additional electrical power to the grid which serves commercial and domestic areas on the Florida Power and Light grid. The thermal power uprate will result in direct displacement of higher cost fossil fuel generation with lower cost nuclear fuel generation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that no significant change in the environmental impact can be expected for the proposed increase in power. The proposed core uprate is projected to increase the heat rejected to the environment by approximately 4.4 percent over the present power level but is insignificant when compared to the heat load from all four units and the incident solar radiation heat gain to the canal. The thermal loading on the canal from the units is approximately 14×10^9 British thermal units per hour (Btu/hr) and the heat duty increase associated with the uprate will be approximately $.44 \times 10^9$ Btu/hr. This is expected to increase the temperature between inlet and outlet by a maximum of 0.7°F over

existing plant operation. The impact on intake temperatures is estimated to be about 0.2°F. There are no discharges to Biscayne Bay or Card Sound from the plant site since the units obtain their cooling water from and discharge to a closed cooling canal system. Therefore, the National Pollutant Discharge Elimination System (NPDES) permit does not place any operating limits on either flow or temperature. Technical Specification (TS) 3.7.4 limits intake temperature to 100°F and this limit will continue to be in effect following the uprate. No changes to any federal, state, or local permits were required for the thermal uprate. Turkey Point has no specifically prescribed protective actions associated with endangered wildlife. FPL does have a monitoring permit to tag and count American crocodiles that is issued by both the U.S. Fish and Wildlife Service and the State of Florida.

The licensee concluded that the uprate will have no adverse impacts on the environment nor result in exceeding NPDES permit limits. There will be no significant increase in non-radiological impacts over those evaluated in the Final Environmental Statement (FES) and evaluations associated with the amendments to recapture the construction period in the license term (CP/OL recapture amendments) dated April 7, 1994. The staff considers that continued compliance with applicable Federal, State, and Local agency requirements relating to environmental protection will preclude any significant non-radiological environmental impacts associated with the proposed uprate.

The licensee evaluated the offsite radiation exposure to the maximally exposed individual member of the general public for the proposed uprate. Section V.D. of the FES projected doses and anticipated annual release of radioactive materials released to the environment from routine operations of the two reactors. Table III–2 of the FES estimated a total annual release of radioactive material in gaseous effluent of 3650 curies/year/unit for noble gases. The latest actual releases in 1995 were <1 curie/year/unit. The FES estimate for iodines and particulates was 0.8 curies/year/unit and the 1995 releases were 0.1 curies/year/unit. Table III–3 estimated the annual release of radioactive materials in liquid effluents to be 27 curie/year/unit from steam generator blowdown and 1 curie/year/unit from waste disposal. The actual 1995 releases were 0 curies/year/unit for steam generator blowdown and 0.1 curie/year/unit for the waste disposal system. A 5 percent increase in power does not necessarily result in any increase in effluents. Moreover, data for years prior to 1995 were reviewed by the staff and found to be well within the FES estimates, even if increased by 5 percent. Therefore, the staff concludes that the actual releases at the Turkey Point units will still remain well within the FES estimates.

With respect to onsite radiation exposure, the licensee stated that the uprate is not expected to increase the day-to-day radiation exposures encountered by plant workers since the in-plant radiation levels will not change significantly compared to the evaluations in the FES and the evaluations associated with the CP/OL recapture amendments. The licensee has developed and implemented programs to maintain doses as-low-as-reasonably-achievable (ALARA). The annual average dose for the 3-year period from 1993–1995 was 159 person-rem per unit at Turkey Point. This is low compared to similar plants and the 1990–1992 Turkey Point average of 332 person-rem per unit. Considering a potential increase of 5 percent, onsite radiation exposure would still be low compared to peer groups. Therefore, the staff concludes that operation at the uprated power level will not significantly impact occupation exposures.

Regarding radioactive waste production, the licensee stated that the annual volume of solid low level radioactive waste is not expected to increase significantly and the current disposal volume is well below the median value for similar facilities. The ALARA program includes maintaining the waste generated and waste released as low as reasonable. The existing design of the liquid and gaseous radwaste systems was based on a core power level of 2300 MWt; therefore, the ability of the systems to provide adequate processing and maintain the radioactive releases within regulatory limits is not impacted by the uprate. Therefore, the staff concludes that operation at the uprated power will not significantly affect the licensee's ability to handle radioactive waste production.

TS 5.6.1 limits the storage of spent fuel to fuel assemblies with a maximum enrichment loading of 4.5 percent of U–235. No change in enrichment is necessary for the uprate condition. On November 14, 1984, the staff issued its ''Environmental Assessment and Finding of No Significant Impact,'' covering the storage of fuel with an enrichment loading of 4.5 percent U–235, which concluded that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the environmental impacts of this aspect of the licensee's power uprate proposal has been previously evaluated and found acceptable by the Commission. TS 5.6.1.3 specifies the requirements regarding burnup of spent fuel for fuel storage. No changes were necessary to TS 5.6.1.3 to support the power uprate request.

The proposed change will not significantly change the types or amounts or any radiological effluents over those that have already been evaluated and found acceptable in the FES and evaluations associated with the CP/OL recapture amendments, and there is no significant increase in the allowable individual or cumulative radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

The amendment does not significantly affect nonradiological plant effluents, has no other environmental impact, and continued compliance with applicable Federal, State, and Local agency requirements relating to environmental protection will preclude any significant non-radiological environmental impacts associated with the proposed uprate. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated July 1972 for Turkey Point Units 3 and 4.

Agencies and Persons Consulted

In accordance with its stated policy, on September 12, 1996 the NRC staff consulted with the Florida State official, Mr. Harland Keaton of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes

that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 18, 1995, as supplemented on May 3, June 11, July 1, July 3, and August 22, 1996, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida 33199.

Dated at Rockville, Maryland, this 12th day of September 1996.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23906 Filed 9–17–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Agriculture Department; Alternative Personnel Management System; Demonstration Project

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of the Department of Agriculture demonstration project plan.

SUMMARY: This action provides for changes in the final project plan published March 9, 1990, to modify the demonstration project coverage to include term appointments. The project was originally conceived to test an alternative to the traditional recruiting and hiring system in an anticipated tight labor market as described in Workforce 2000 and Civil Service 2000. On March 8, 1996, a Federal Register notice was published to modify the list of experiment sites to include comparison sites. This change provided the opportunity to test these flexibilities in a downsizing environment with a more than adequate high-quality labor market even though there are occasional shortages of qualified candidates. By amending the project plan to include term appointments, a need to operate a parallel examining system for permanent and term positions will be eliminated thus avoiding administrative inefficiencies and ineffectiveness.

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT:

Mary Ann Jenkins, (202) 720–0515, at the Department of Agriculture; Joan Jorgenson, (202) 606–1315, at the Office of Personnel Management.

SUPPLEMENTARY INFORMATION: On March 9, 1990, OPM published a notice to demonstrate an alternative personnel management system at the U.S. Department of Agriculture. One of the project innovations is to test a candidate assessment method which uses categorical groupings instead of numeric score. The demonstration authority replaces the traditional system of examining applicants and ranking candidates, instead the candidates will be assigned to one of two groups—quality or eligible—based on job related evaluation criteria. To be placed in the quality group, a candidate's background must show: above average educational achievement; or, quality experience which is defined as experience clearly above and beyond (Operating Manual: Qualification Standards for General Schedule Positions) basic qualification requirements, and which is directly related to the work of the position to be filled; or, evidence of high ability to do the work of the position. Candidates who do not meet the quality group criteria but who meet basic qualification requirements will be assigned to the eligible group. Within each group, preference eligibles will be listed ahead of nonpreference eligibles. In addition, for positions other than scientific and professional at GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic eligibility requirements will be listed at the top of the quality group.

Selection will be made from among candidates in the quality group. When an inadequate number of candidates is in the quality group, all qualified candidates will be listed as a single group.

With the addition of term appointments, project participation will still not exceed the statutory limit of 5000 at any given time.

Dated: September 11, 1996.

Office of Personnel Management.

James B. King,

Director.

Project Plan Modification

The project plan which appeared in the Federal Register on March 9, 1990 (55 FR 9062) is hereby modified to include using the candidate assessment method for term appointments for the Agricultural Research Service and Forest Service.

[FR Doc. 96–23781 Filed 9–17–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22217; File No. 812–10110]

Allianz Life Insurance Company of North America, et al.

September 11, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Allianz Life Insurance Company of North America (''Allianz''), Allianz Life Variable Account A (''Account A''), Allianz Life Variable Account B (''Account B''), Preferred Life Insurance Company of New York (''Preferred'') and Preferred Life Variable Account C (''Account C,'' together with Account A and Account B, the ''Accounts'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b) of the 1940 Act, approving the proposed substitution of securities, and pursuant to Section 17(b) or, in the alternative, Section 6(c) of the 1940 Act, exempting the proposed transactions from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants request an order of the Commission pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the U.S. Government Securities Fund (''Government Fund'') of the Franklin Valuemark Funds (the ''Trust'') for shares of the Adjustable U.S. Government Fund (''Adjustable Fund'') and the investment Grade Intermediate Bond Fund (''Bond Fund'') of the Trust held by the Accounts. Applicants also request an order pursuant to Section 17(b) or, in the alternative, pursuant to Section 6(c) of the 1940 Act, granting exemptions from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit certain purchase and sale transactions between affiliates in connection with the substitution.

FILING DATE: The application was filed on April 26, 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 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Joan E. Boros, Esq., Katten Muchin & Zavis, 1025 Thomas Jefferson Street, N.W., Suite 700, East Lobby, Washington, D.C. 20007.

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. Allianz, a stock life insurance company formerly known as North American Life and Casualty Company, is a wholly-owned subsidiary of Allianz of America, Inc., a majority-owned subsidiary of Allianz Versicherungs-AG Holding, which is headquartered in Munich, Germany. Allianz writes individual and group fixed and variable immediate and deferred annuity contracts on a non-participating basis, and single premium and flexible premium variable life insurance policies. Allianz is the sponsor and depositor of Account A and Account B.

2. Preferred, a stock life insurance company incorporated in New York in 1982, is a wholly-owned subsidiary of Allianz. Preferred offers group life, group accident, and health insurance, and variable annuity contracts. Preferred is the sponsor and depositor of Account C.

3. Each of the Accounts is registered under the 1940 Act as a unit investment trust. The assets of each Account support either variable annuity contracts or variable life insurance polices (together, the ''Contracts''). Interests in each of the Accounts offered through such Contracts have been registered under the Securities Act of 1933 on either Form S–6 or Form N–4. Each Account is divided into sub-accounts (''Subaccounts'') that correspond to the portfolios of the Trust, including the Adjustable Fund the Bond Fund and the Government Fund.

4. The Trust was organized as a Massachusetts Business Trust on April 26, 1988, and is registered under the 1940 Act as an open-end management investment company. The Trust is a series investment company that currently has twenty-one investment portfolios (''Funds,'' and individually, ''Fund''). Shares of the Funds currently are sold only to separate accounts of Allianz and its affiliates to fund variable life insurance policies or variable annuity contracts. Franklin Advisers, Inc. (''Adviser'') is the investment adviser to the Funds that are the subject of this application.

5. The investment objective of the Adjustable Fund is to seek a high level of current income, consistent with lower volatility of principal, by investing primarily in adjustable rate securities which are issued or guaranteed by the U.S. government, its agencies or instrumentalities. The investment objective of the Bond Fund is to seek current income, consistent with preservation of capital, primarily through investment in intermediate-term, investment grade corporate obligations and in U.S. government securities. The investment objective of the Government Fund is to seek current income and safety of capital by investing exclusively in obligations issued or guaranteed by the U.S. government or its agencies or instrumentalities.

6. The Adjustable Fund and the Bond Fund as individual investment alternatives have not generated substantial interest of Contract owners (the ''Owners'') in recent years. Overall variable product sales by Allianz and Preferred are made primarily to person interested in retirement-planning and increasingly preferring long-term, growth oriented investments. On December 31, 1995, the adjustable Fund had $190 million in assets, compared to $303.4 million at the end of 1993, a decrease of 37.37%. Bond Fund assets increase 34.52% from 1993 to 1995 (from $123.4 million to $166 million), but increased only 7.17% from 1994 to 1995 (from $154.9 million to $166 million).

7. The Government Fund, with assets of $643.3 million on December 31, 1995, offers Owners a larger fund with similar investment policies, providing a potential for economies of scale. In addition, the elimination of two funding options under the Contracts will facilitate the Trust's organization of two new portfolios currently in registration which invest primarily in equity securities and are more responsive to demonstrated preferences of Contract purchasers. The substitution of Government Fund shares for all Adjustable Fund and Bond Fund share attributable to the Contracts will avoid increasing the total number of portfolios to be administered under the Contracts. If Applicants can better serve the interests of Owners by using the Government Fund and adding new investment alternatives that they believe may be better suited to the needs and interests of Owners, it is not in the public interest to continue to use the Adjustable Fund and the Bond Fund as funding vehicles for the Contracts.

The Proposed Transactions

1. Allianz and Preferred propose to effect a substitution (the ''Substitution'') of shares of the Government Fund for all shares of the Adjustable Fund and all shares of the Bond Fund attributable to the Contracts. Applicants represent that Allianz and Preferred will pay all expenses and transaction costs associated with the Substitution, including any applicable brokerage commissions. Applicants have filed with the Commission amended prospectuses for the Accounts which will provide Owners with information concerning the proposed Substitution.

2. Within five days after the Substitution, Allianz and Preferred will send to Owners written notice (''Notice'') of the Substitution that identifies the shares of the Adjustable Fund and the Bond Fund that have been eliminated and the shares of the Government Fund that have been substituted. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Subaccount, without limitation and without charge. Moreover, any Owner-initiated transfers of all available assets from the Subaccount investing in the Government Fund to a Subaccount investing in any other Fund of the Trust from the date of the Notice to thirty days thereafter (the ''Free Transfer Period'') will not be counted as transfer requests under any contractual provisions of the Contracts that limit the number of allowable transfers.

3. At the close of business on the effective date of the Substitution, Allianz and Preferred each will redeem all shares of the Adjustable Fund and the Bond Fund currently held on behalf of the Accounts. Simultaneously with the redemption request, Allianz and Preferred will place a purchase order with the Government Fund so that

purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Owners currently invested in the Adjustable Fund and the Bond Fund will remain fully invested.

4. The Adjustable Fund and the Bond Fund are likely to incur brokerage fees and expenses in connection with the redemption of all shares of those Funds by Allianz and Preferred. To alleviate the potential impact of such fees and expenses on the Adjustable Fund and the Bond Fund, the redemption of shares of the Adjustable Fund and the Bond Fund will be effected partly for cash and partly for portfolio securities redeemed in-kind. By this procedure, at the effective date of the Substitution, the Adjustable Fund and the Bond Fund will transfer to the Government Fund cash proceeds and/or portfolio securities held by the Adjustable Fund and the Bond Fund. Allianz and Preferred will use such cash proceeds and/or portfolio securities to purchase shares of the Government Fund.

5. The Trust will effect the redemptions-in-kind and the transfers of portfolio securities in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to the Government Fund. Allianz and Preferred each will take steps to assure that the portfolio securities selected by the Adviser for redemptions-in-kind are suitable investments for the Government Fund.

6. Partially effecting the redemption of shares of the Adjustable Fund and the Bond Fund in-kind is appropriate, based on the current similarity of certain of the portfolio investments of the Adjustable Fund and the Bond Fund to those of the Government Fund. The valuation of any in-kind redemptions will be made on a basis consistent with the normal valuation procedures of the Adjustable Fund and the Bond Fund and the normal valuation procedures of the Government Fund.

7. The full net asset value of the redeemed shares held by the Accounts will be reflected in the Owners' unit values following the Substitution. Allianz and Preferred have undertaken to assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of the Adjustable Fund and the Bond Fund, so that the full net asset value of redeemed shares of the Adjustable Fund and the Bond Fund held by the Accounts will be reflected in the Owners' unit values.

8. The Adviser has been fully apprised of the terms of the Substitution. Allianz and Preferred anticipate that the Adviser, to the extent appropriate, will conduct the trading of portfolio securities in a manner that provides for the anticipated redemptions of shares held by the Accounts.

9. Immediately following the Substitution, Allianz and Preferred, as appropriate, will combine the Subaccount invested in the Adjustable Fund and the Subaccount invested in the Bond Fund with the continuing Subaccount invested in the Government Fund. Allianz and Preferred each will reflect this treatment in disclosure documents for their respective Accounts, the financial statements of their respective Accounts and the Form N–SAR annual reports filed by their respective Accounts.

10. Following the Substitution, Owners will be afforded the same contract rights as they currently have, including surrender and other transfer rights with regard to amounts invested under the Contracts.

Applicants' Legal Analysis

Request for an Order Pursuant to Section 26(b)

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants maintain that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b). Applicants assert that the Substitution will not result in the type of costly forced redemptions that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution is of shares of a substitute fund whose objectives, policies and restrictions are sufficiently similar to the objectives of the Funds to be eliminated so as to continue fulfilling the Owners' objectives and risk expectations.

(b) The Substitution, in all cases, will be at the net asset value of the respective shares, without the imposition of any transfer or similar charge.

(c) Allianz and Preferred have undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution. The partial redemptions-in-kind contemplated for appropriate portfolio securities of the Adjustable Fund and the Bond Fund are expected to contribute to the reduction of such costs.

(d) Within five (5) days after the Substitution, Allianz and Preferred will send to Owners written notice of the Substitution that identifies the shares of the Adjustable Fund and the Bond Fund that have been eliminated and the shares of the Government Fund that have been substituted.

(e) If an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in an Owner-selected Subaccount and related Fund. The Free Transfer Period is sufficient time for Owners to reconsider the Substitution.

(f) The Substitution will not be counted as a transfer under any contractual provisions of the Policies or Contracts that limit the number of allowable free transfers.

(g) The Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Allianz and Preferred.

(h) The Substitution in no way will alter the tax benefits to Owners.

(i) Owners may choose simply to withdraw amounts credited to them following the Substitution, under the conditions that currently exist, subject to any applicable declining sales load.

(j) The Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of the Government Fund.

Request for an Order Pursuant to Section 17(b)

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of such affiliated persons, acting as principal, from purchasing any security or other property from such registered investment company.

2. Applicants state that, immediately following the Substitution, Allianz and Preferred, as appropriate, will combine: (i) The Subaccounts in the Adjustable

Fund with a continuing Subaccount invested in the Government Fund; and (ii) the Subaccounts invested in the Bond Fund with the continuing Subaccount invested in the Government Fund. Applicants state that Allianz and Preferred could be said to be transferring unit values between their Subaccounts. The transfer of unit values may involve purchase and sale transactions between Subaccounts that are affiliated persons. Such transactions between Subaccounts may come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act. Therefore, Applicants seek an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act, or, in the alternative, pursuant to Section 6(c) of the 1940 Act.

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting the transactions prohibited by Section 17(a) upon application if evidence establishes that: (a) 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; (b) the proposed transaction is consistent with the investment policy of each register investment company concerned, as recited in its registration statement and reports filed under 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

4. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the terms of the proposed transactions are: (a) Reasonable and fair, including the consideration to be paid and received, and do not involve overreaching; (b) are consistent with the policies of the Funds of the Trust; and (c) are consistent with the general purposes of the 1940 Act. Applicants state that the transactions effecting the Substitution, including the redemption of the shares of the Adjustable Fund and the Bond Fund and the purchase of shares of the Government Fund, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Moreover, the partial redemptions-in-kind of portfolio securities of the Funds will be effected in conformity with Rule 18f–1 under the 1940 Act, the majority of the conditions of Rule 17a–7 under the 1940 Act, and the procedures of the Trust established pursuant to Rule 17a–7. In practical economic terms, Owner interests after the Substitution will not differ in any measurable way such interests immediately prior to the Substitution. In addition, Allianz and Preferred each maintain, based on their review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

6. Applicants also assert that the proposed transactions are consistent with the investment policy of each investment company concerned in that the investment objectives of the Government Fund are sufficiently similar to the investment objectives of the Adjustable Fund and the Bond Fund.

7. Applicants maintain that the proposed transactions are consistent with the general purposes of the 1940 Act. Applicants state that the proposed transactions do not present any of the issues or abuses that the 1940 Act was designed to prevent. Moreover, Applicants assert that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, as required by Section 6(c) of the 1940 Act. Owners will be fully informed of the terms of the Substitution through the amended prospectuses and the Notice, and will have an opportunity to reallocate investments prior to and following the Substitution.

Conclusion

For the reasons discussed above, Applicants assert that the requested order approving the Substitution pursuant to Section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicant further assert that the requested exemptions from Sections 17(a)(1) and 17(a)(2) of the 1940 Act in connection with the proposed Substitution meet the standards of Section 17(b) of the 1940 Act and are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23836 Filed 9–17–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration (Fountain Powerboat Industries, Inc., Common Stock, $0.01 Par Value); File No. 1–10316

September 12, 1996.

Fountain Powerboat Industries, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Securtity'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on May 22, 1996 to withdraw the Security from listing on the Amex and instead, to list the Security on the National Association of Securities Dealers Automated Quotations National Market System (''Nasdaq NMS'').

The decision of the Board followed a lengthy study of the matter and was based upon the belief that listing the Security on the Nasdaq NMS will be more beneficial to its stockholders than the present listing on the Amex because of the perceived greater liquidity of the Nasdaq NMS.

Any interested person may, on or before October 3, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–23837 Filed 9–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22218/File No. 812–10082]

Metropolitan Life Insurance Company, et al.

September 12, 1996.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

APPLICANTS: Metropolitan Life Insurance Company (''Metropolitan Life'') and Metropolitan Life Separate Account UL (''Account UL'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the Act for exemptions from Section 27(a)(3) of the Act and Rule 6e–3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the front-end sales charge imposed under certain flexible premium variable life insurance policies (''Policies'') to be eliminated for payments in excess of one annual target premium in any Policy year.

FILING DATE: The application was filed on April 9, 1996.

HEARING OF 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 should be accompanied by proof of service on Applicants in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of 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, c/o Christopher P. Nicholss, Esq., Metropolitan Life Insurance Company Law Department, One Madison Avenue, New York, NY 10010.

FOR FURTHER INFORMATION CONTACT: Joyce Merrick Pickholz, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Metropolitan Life, incorporated under the laws of the State of New York in 1866, has been engaged in the life insurance business under its current name since 1868. Metropolitan Life is registered as a broker-dealer under the Securities Exchange Act of 1934 and is the principal underwriter for Account UL.

2. Account UL, established by Metropolitan Life pursuant to New York Insurance Law on December 13, 1988, is registered as a unit investment trust under the Act. There are currently seven investment divisions in Account UL. The assets of each investment division are invested in a separate class (or series) of stock issued by Metropolitan Series Fund, Inc. (''Fund''). Assets are allocated to Account UL from time to time in connection with flexible premium variable life insurance policies issued by Metropolitan Life in reliance on Rule 6e–3(T) under the Act, including the Policies.

3. The Policies provide for premium flexibility, together with a death benefit and a cash surrender value that may increase or decrease daily depending, in part, on the investment performance of the Fund.

4. The insurance proceeds, payable when the insured under the Policy dies, will equal the death benefit of the particular Policy, plus any additional rider benefits, minus any indebtedness under the Policy, and minus any due and unpaid charges accruing during a grace period. One of several death benefit options may be elected by the Policy owner.

5. The initial cash value of a Policy is the amount of premium allocated to Account UL and the Fixed Account, after deduction of the initial charges. The cash value increases or decreases daily depending on the investment experience of the investment division to which amounts are allocated, as well as interest declared for the Fixed Account.

6. The owner may surrender a Policy at any time while the insured is living. The cash surrender value is the cash value of a Policy less any indebtedness. The owner may also make partial withdrawals from a Policy, subject to certain restrictions.

7. A charge, currently equal to 2.25% of each premium payment, will be deducted from each premium payment, representing an average rate expected to be paid on premiums received in all states over the lifetimes of the insureds covered by the Policies. This charge may be increased for Policies not yet issued, in order to correspond with changes in state premium tax levels.

8. A charge, currently equal to 1.20% of each premium payment will be deducted from each premium payment to cover the estimated cost of the federal income tax treatment of the Policies' deferred acquisition costs—commonly referred to as the ''DAC tax.'' This charge may be increased, subject to certain conditions, for Policies not yet issued, in order to correspond with changes in the federal income tax treatment of the Policies' deferred acquisition costs.

9. A sales charge is deducted from each premium payment received by Metropolitan Life. The sales charge may be up to 9% of premiums paid in each of the first ten Policy years and up to 3% of premiums paid in each Policy year thereafter, until the total of such payments in each such Policy year equals one annual target premium. Under the Policies, the sales charge will be 0% for payments made in excess of one annual target premium in any Policy year. Currently, the annual target premium for the Policies is the estimated annual amount that satisfies the ''7 pay'' test for determining modified endowment status under the Internal Revenue Code. However, Manufacturers Life reserves the right to modify the definition of target premium for Policies issued in the future.

10. An administrative charge of up to 1.05% of premiums paid is deducted from all premium payments to compensate Metropolitan Life for expenses incurred in administering, issuing and underwriting the Policies. The administrative charge is reduced by 1% on the portion of any premium paid in a Policy year that exceeds the target premium.

11. At the present time, a charge of $25, subject to certain exceptions, will be assessed against the cash value of a Policy when amounts are transferred among the investment divisions of Account UL, and between the investment divisions and the Fixed Account, more than six times in any Policy year. Metropolitan Life reserves the right in the future to assess a charge against all transfers.

12. A cost of insurance charge will be deducted monthly from cash value based upon Metropolitan Life's amount at risk under the Policy, the attained age and risk classification of the insured, the sex of the insured (with certain

exceptions), and the then-current monthly insurance rates (guaranteed for the standard underwriting risk class never to exceed the maximum rates set forth in the Policy based on certain of the 1980 Commissioners' Standard Ordinary Mortality Tables). An additional charge for extra mortality risks will be deducted monthly from cash value if the insured does not qualify for the standard underwriting class. The amount of the charge depends upon the age of the insured and the degree of additional mortality risk.

13. A monthly charge will be made for mortality and expense risks at an effective annual rate not to exceed .90% (currently up to .60%) of the investment divisions' assets attributable to the Policies.

14. Any increase in coverage elected by the Policy owner may be subject to a one-time underwriting charge against cash value at a rate of up to $3.00 for each $1,000 of increased coverage.

15. Additional charges are deducted if the owner elects to purchase certain optional insurance benefits. These additional charges will be deducted monthly from cash value.

16. Other than the tax charges described above, no additional charges are currently made for the tax liabilities of Metropolitan Life. Metropolitan Life reserves the right, subject to any necessary regulatory approval, to assess additional tax charges should it incur increased taxes attributable to the Policies or Account UL in future years.

17. Except to the extent that exemptive relief has been obtained from the Commission pursuant to this or any other applicable exemptive application, all charges under the Policies will comply with all of the applicable limitations, terms, conditions and requirements of the Act and rules thereunder.

Applicants' Legal Analysis

1. Section 27(a)(3) of the Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e–3(T)(b)(13)(ii), in pertinent part, provides an exemption from Section 27(a)(3), provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment. This is commonly referred to as the ''stair-step'' requirement.

2. Applicants state that Metropolitan Life will not, with regard to the Policies, impose the 9% (or, as the case may be, 3%) front-end sales charge upon the amount of any premium payments received in any Policy year that is in excess of one annual target premium (''Excess Premiums''). Accordingly, the front-end sales charge may apply to some premium payments but not to others. Applicants submit that Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii) appear to prohibit this structure and request an order exempting them from these provisions to the extent necessary to permit the sales charge deducted from premiums up to one target premium paid during any year to exceed the sales charge (none) payable on any Excess Premium payments made in any prior year.

3. Applicants assert that the Policies would comply with all of the sales charge limitations and requirements of Rule 6e–3(T) (including those contained in Rule 6e–3(T)(b)(13)(ii)), if the front-end sales charge were deducted from all premium payments. However, Applicants submit that such a front-end charge structure would be less favorable to Policy owners than that provided under the Policies.

4. According to the Applicants, the sales charge deducted from the first target premium paid under a Policy in any Policy year, as compared with the absence of such a charge deducted from Excess Premiums, in part reflects the fact that lower overall distribution costs (*e.g.*, commissions paid to sales persons) are incurred in connection with Excess Premiums over the life of the Policies. To deduct a sales charge from Excess Premiums would generate more revenue than Metropolitan Life believes is necessary to adequately defray such expenses. Thus, the structure of the front-end sales load under the Policies provides a significant benefit to owners by passing through to them lower distribution costs with respect to Excess Premiums. Applicants submit that it would not be in the interest of owners to require the deduction from Excess Premiums of a sales charge that is higher than Applicants deem necessary.

5. Applicants state that a purpose of Section 27(a)(3), in conjunction with the other sales charge limitations in the Act, was to address the perceived abuse of periodic payment plan certificates that deducted large amounts of front-end sales charges so early in the life of the plan that an investor redeeming in the early periods would recoup little of his or her investment. Applicants assert that the sales load structure of the Policies would not have this effect. On the contrary, not deducting any sales charge from Excess Premiums paid in any Policy year, according to Applicants, results in a greater proportion of the Policies' sales charges being deducted later than otherwise would be the case.

6. Applicants submit that a purpose behind Section 27(h)(3) of the Act, a provision similar to Section 27(a)(3), is to discourage unduly complicated sales charges; this also may be deemed to be a purpose of Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii). Applicants submit that the sales charge structure under the Policies is relatively straightforward and easily understood, as compared with that of many other variable life insurance policies that are currently being offered. Moreover, Applicants represent that owners of Policies will benefit from the sales charge structure of the Policies.

7. Applicants state that Rule 6e–3(T)(b)(13)(ii) specifically permits an insurance company to reduce or eliminate its sales charges with respect to amounts contributed to a variable life insurance policy in connection with an exchange from another plan of insurance and, thereafter, to impose the full sales charge with respect to subsequent premium payments under the same policy. Applicants explain that such sales charge variations normally reflect decreased sales expenses in connection with exchange amounts. Accordingly, Applicants contend that they should be permitted to reflect their reduced sales expenses by forgoing the sales charge that otherwise would be deducted from any Excess Premiums, notwithstanding that Metropolitan Life may deduct a sales charge from subsequent target premium payments.

8. Applicant assert that the fact that the full 9% (or, as the case may be, 3%) front-end sales charge may apply at some times but not other times under the same Policy results solely from the action of Policy owners in exercising the flexibility features under a Policy: *e.g.*, flexibility in the timing and amount of premium payments. Applicants submit that the flexibility features are desirable from the standpoint of Policy owners.

Conclusion

For the reasons and upon the facts stated above, Applicants submit that the requested exemptions are 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.

For the Commissioner, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23900 Filed 9–17–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act; Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 16, 1996.

A closed meeting will be held on Thursday, September 19, 1996, at 4:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 19, 1996, at 4:00 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 13, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–23974 Filed 9–16–96; 9:03 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7329; 34–37672, International Series Release No. 1018, File No. S7–19–96]

RIN 3235–AG83

Securities Act Concepts and Their Effects on Capital Formation

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: The expiration date of the comment period with respect to the Commission's concept release on Securities Act reform, Release No. 33–7314 (61 FR 40044), is extended from September 30, 1996 to October 31, 1996.

DATES: Comments should be received on or before October 31, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C., 20549. Comments also may be submitted electronically to the following electronic mail address: rule-comment@sec.gov. All comment letters should refer to File No. S7–19–96; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anita Klein, Office of Chief Counsel, Division of Corporation Finance, (202) 942–2900.

SUPPLEMENTARY INFORMATION: On July 25, 1996, the Commission issued a concept release (Release No. 33–7314 [61 FR 40044]) to solicit public comment on the best means of improving the regulation of the capital formation process while maintaining or enhancing investor protection. The Commission is engaged in a broad reexamination of the regulatory framework for the offer and sale of securities under the Securities Act of 1933. Comment was solicited on a number of possible approaches to improving the registration process. Among them are: the recommendation of the Advisory Committee on the Capital Formation and Regulatory Processes to implement a ''company registration'' approach; modifications to the existing shelf registration system (many of which were recommended by the Commission's Task Force on Disclosure Simplification); reforms that would liberalize the treatment of unregistered securities; and an approach that would involve deregulation of offers. The comment period with respect to the concept release was scheduled to end on September 30, 1996. In order to provide additional time for commenters to consider the issues discussed in the concept release, the Commission has extended the comment period on the concept release until October 31, 1996.

Dated: September 12, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23901 Filed 9–17–96; 8:45 am]

BILLING CODE 8010–01–P

[File No. 500–1]

JDMC Global Corp.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission (''Commission'') that there is a lack of current and accurate information concerning the securities of JDMC Global Corp. (''JDMC Global'') because of questions regarding the accuracy of representations and assertions by JDMC Global, and by others, in documents sent to and statements made to market makers of the stock of JDMC Global, other broker-dealers, and to investors concerning, among other things: (1) The value of certain JDMC Global assets listed on its audited financial statements; and (2) a contract to construct homes in South Africa.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, September 16, 1996 through 11:59 p.m. EDT, on September 27, 1996.

By the Commission.

Dated: September 16, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–24057 Filed 9–16–96; 1:09 pm]

BILLING CODE 8010–01–M

[Release No. 34–37667; File No. SR–NYSE–96–22]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Extension of Rule 103A (Specialist Stock Reallocation)

September 11, 1996.

I. Introduction

On August 6, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change (File No. SR–NYSE–96–22) to extend the effectiveness of NYSE Rule 103A, Specialist Stock Reallocation, until September 10, 1997. The proposed rule change was published for comment in theFederal Register on August 21, 1996.[3] No. comments were received on the proposal. On September 10, 1996, the Exchange amended the filing (''Amendment No. 1'') to shorten the length of the effectiveness of NYSE Rule 103A until January 10, 1997.[4] For the reasons set forth below, the Commission is approving the extension of NYSE Rule 103A until January 10, 1997, on an accelerated basis.

II. Description of the Proposal

The NYSE seeks to extend the effectiveness of Rule 103A, Specialist Stock Reallocation, until January 10, 1997. NYSE Rule 103A grants authority to the Exchange's Market Performance Committee to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal Performance Improvement Action in appropriate cases. The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed Securities.

The Exchange originally proposed the adoption of Rule 103A in 1979.[5] Since that time, the pilot program has been extended numerous times. Most recently, on May 10, 1995, the SEC extended the effectiveness of the rule until September 10, 1996.[6] In its approval order, the Commission stated its continued belief that the Exchange should develop objective performance standards to measure specialist performance.[7]

Currently, the Exchange has in place two objective measures of specialist performance. It should be noted, however, that these measures are not currently included in the Rule 103A program. The first objective measure of performance pertains to specialist capital utilization. Adopted in December 1993 on a pilot basis, the capital utilization measure of specialist performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.[8] The capital utilization measure pilot has been extended until September 10, 1996.[9] The Exchange's Allocation Committee is being provided with specialist capital utilization information for its use in allocation decisions.

The second objective measure of performance, which was recently developed, pertains to ''near neighbors.'' On June 30, 1995, the Commission approved this filing on a fifteen month pilot basis through September 10, 1996.[10] The ''near neighbors'' measure compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its ''near neighbors'' (*i.e.*, stocks that have certain similar characteristics). The Exchange would provide ''near neighbor'' information to the Allocation Committee for its use in allocating newly-listed stocks.[11] On July 1, 1996, the Exchange filed to extend the pilot programs for both the near neighbor and capital utilization measure of specialist performance.[12] The Commission has approved the extension of both pilots until January 10, 1997. The Exchange has also indicated its intention to work with outside consultants and appropriate constituent groups to develop performance standards applicable to these objective measures for incorporation into Rule 103A.

Regarding the Intermarket Trading System (''ITS''), the Commission has stated its belief that the mature status of the ITS as a market structure facility warrants the incorporation of ITS turnaround and ''trade-through'' concerns into the NYSE's Rule 103A performance standards. The Exchange continues to believe that ITS matters are more appropriately addressed by means of the Exchange's regulatory process rather than through its performance measurement system, but will continue to study the matter.

III. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 11(b) of the Act.[13] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 11(b) of the Act, and Rule 11b–1 thereunder,[14] allow securities exchanges to promulgate rules relating to specialists consistent with the maintenance of fair and orderly markets.

Specifically, because specialist units play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange, the Commission believes that effective oversight, including periodic evaluation of the specialists' performance, is important to the maintenance of a fair and efficient marketplace. The Commission believes that the NYSE's Rule 103A performance evaluation

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1994).

[3] Securities Exchange Act Release No. 35764 (August 14, 1996), 61 FR 43284.

[4] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission (September 10, 1996.

[5] Securities Exchange Act Release No. 15827 (May 15, 1979), 44 FR 100 (May 22, 1979) [File No. SR–NYSE–77–24]

[6] *See* Securities Exchange Act Release No. 35704 (May 10, 1995), 60 FR 26060 (May 16, 1995) [File No. SR–NYSE–95–18].

[7] *See id.* The Commission notes that the Exchange's current evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening (both regular and delayed), systematized order turnaround, and the timeliness of a unit's response to status requests. Specialist performance also is measured by the Exchange's Specialist performance Evaluation Questionnaire.

[8] *See* Securities Exchange Act Release No. 33369 (December 23, 1993), 58 FR 69431 (December 30, 1993) [File No. SR-NYSE-93–30].

[9] *See* Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) [File No. SR-NYSE-95–24].

[10] *See* Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35764 (July 11, 1995) [File No. SR-NYSE-95–05].

[11] The near neighbor measure would provide the Allocation Committee with performance data.

[12] File No. SR-NYSE–96–17.

[13] 15 U.S.C. § 78f(b)(5) and 78k(b) (1988).

[14] 17 CFR 240.11b–1 (1994).

process is critical to this oversight in that it provides the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities, as required pursuant to Exchange rules and the Act, and the rules thereunder.[15] Moreover, the possibility of a performance improvement action as a result of the evaluation process, in addition to the use of the evaluation results in stock allocation decisions, should help motivate and provide incentives for specialists to maintain and improve their market making performance for the benefit of investors.

In previous orders extending the Rule 103A pilot,[16] the Commission emphasized its desire for the Exchange to develop objective measures of market making performance and incorporate such measures into the Rule 103A pilot.[17] In addition, the Commission previously stated that it believes the mature status of the Intermarket Trading System, as a market structure facility, warrants the incorporation of ITS turnaround and trade-through concerns into the NYSE's Rule 103A performance standards. As discussed fully in a previous extension order,[18] the Commission believes that objective measures of specialist performance with regards to these concerns should be incorporated into the evaluation process.

Even though the proposal lacks objective market making performance standards, the Commission has determined to approve the proposal to extend the effectiveness of Rule 103A for an additional four months. In Amendment No. 1, the Exchange indicated that at the end of the four month extension it will seek permanent approval of the proposal from its Board of Directors, and subsequently file such request with the Commission.[19]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer, on an uninterrupted basis, its Rule 103A evaluation process. A substantial portion of current Rule 103A was noticed for the full statutory period in 1987, and the Commission did not receive any adverse commentary on the revised Rule 103A program.[20] Further, interested persons were invited to comment on this proposal and the Commission received no comments. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11 of the Act.

It is therefore, ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change is hereby approved on an accelerated basis until January 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23899 Filed 9–17–96; 8:45 am]

BILLING CODE 8010–01–M

[15] *See generally* NYSE Rule 104 (Dealings By Specialists); and Commission Rule 11b–1 under the Act, 17 CFR 240.11b–1 (1994).

[16] *See* Securities Exchange Act Release Nos. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994); 32285 (May 10, 1993), 58 FR 28905 (May 17, 1993); 29180 (May 8, 1991), 56 FR 22489 (May 15, 1991); and 28215 (July 17, 1990), 55 FR 30060 (July 24, 1990).

[17] *See supra.* Although the Exchange has developed the capital utilization and near neighbor measures of market making performance for use by the Allocation Committee, it has not yet proposed to include these objective measures in its Rule 103A program.

[18] *See* Security Exchange Act Release No. 34022 (May 6, 1994), 59 FR 25143 (May 13, 1994).

[19] In this regard, the Commission expects the NYSE to submit to the Division of Market Regulation, no later than November 15, 1996, a proposed rule change pursuant to Rule 19b–4 under the Act, 17 CFR 240.19b–4, to request permanent approval of Rule 103A.

[20] *See* Securities Exchange Act Release Nos. 24919 (September 15, 1987), 52 FR 35821 (September 23, 1987); and 25681 (May 9, 1988), 53 FR 17287 (May 16, 1987).

[21] 15 U.S.C. § 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1996).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTAL INFORMATION:

Title: Governor's Request for Disaster Declaration.

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: States Requesting a Presidential Disaster Declaration.

Annual Responses: 50.

Annual Burden: 1,000.

Comments: Send all comments regarding this information collection to Bridget Dusenbury Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6500 Washington, DC 20416. Phone No.: 202–205–6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: Application for Certification as a Certified Development Company.

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Applicants to become CDC's.

Annual Responses: 15.

Annual Burden: 150.

Comments: Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Loan Programs, Small Business Administration, 409 3rd Street, SW., Suite 8300 Washington, DC 20416. Phone No. 202–205–6490.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: Survey of Commercialization Activities of SBIR Awardees.

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: SBIR Program Participants.

Annual Responses: 700.

Annual Burden: 84.

Comments: Send all comments regarding this information collection to Daniel O. Hill, Assistant Administrator, Office of Technology, Small Business Administration, 409 3rd Street, SW., Suite 8150 Washington, DC 20416. Phone No.: 202–205–6450.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: Request for Information Concerning Portfolio Financing.

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Title: Financial Institution Confirmation Form.

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 1,500.

Annual Burden: 750.

Comments: Send all comments regarding these information collections to Charles Mezger, Director, Office of SBIC Examinations, Small Business Administration, 409 3rd Street, SW., Suite 8300 Washington, DC 20416. Phone No.: 202–205–7172.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimates, in addition to ways to minimize these estimates, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–23878 Filed 9–17–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for reinstatement, without change, of a previously approved collection for which approval has expired. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 8, 1996 (61 FR, page 15557).

DATES: Comments must be submitted on or before October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Street, (202) 267–9895, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration

Title: Operating Procedures for Airport Traffic Control Towers (ATCT) that are not operated by or under contract with the United States (non-Federal) Advisory Circular (AC) 90–93.

Type of Request: Reinstatement of a previously approved information collection for which approval has expired.

OMB Control Number: 2120–0572.

Affected Entities: Non-Federal airport traffic control tower vendors, managers, and air traffic controllers.

Abstract: The FAA is requesting operators of non-Federal ATCT's to voluntarily comply with the recommendations as stated in this Advisory Circular as well as to voluntarily submit information by using the listed forms, in the same manner as is currently prescribed for FAA air traffic personnel.

Burden Estimate: The estimated total annual burden is 2,263 hours.

Annual Responses: 62.

Comments: Send all comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility; accuracy of the burden estimates; ways to minimize this burden; and ways to enhance quality, utility, and clarity of the information to be collected to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Issued in Washington, DC, on September 12, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–23871 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement: Maricopa County, Arizona

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth H. Davis, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004, Telephone: (202) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an Environmental Impact Statement (EIS) for a proposal to build the Red Mountain Freeway, Loop 202, from SR–87 to US 60. The proposal will include a ''no action'' alternative in addition to a range of build alternatives. Various designs of grade, alignment, geometry and access will be evaluated. The evaluation of alternatives will consider the social, economic, and environmental impacts associated with construction and with secondary and cumulative effects.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will continue with public information meetings to obtain public input in the planning process, and a public hearing following distribution of the Draft EIS.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on September 11, 1996.

Kenneth H. Davis

District Engineer, Phoenix, Arizona.

[FR Doc. 96–23860 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–22–P

[FHWA Docket No. 94–15]

Life-Cycle Cost Analysis

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Final policy statement.

SUMMARY: This FHWA policy statement on life-cycle cost analysis (LCCA) helps fulfill Federal management responsibilities for analyzing life-cycle cost aspects of infrastructure investment decisions under Executive Order 12893, ''Principles of Federal Infrastructure Investment.'' The policy statement

establishes LCCA principles to be applied by FHWA in infrastructure investment analyses, and provides a framework that States may use in conducting LCCA as required in Section 303 of the National Highway System (NHS) Designation Act of 1995 (P.L. 104–59) or as appropriate for other investment decisions. The importance of considering life cycle costs in various phases of project development, construction, maintenance, and operation is emphasized.

DATES: This policy statement is effective on September 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James W. March, Team Leader, Systems Analysis Team, (202) 366–9237, or Mr. Steven M. Rochlis, Program Legal Services Division, (202) 366–0780, FHWA, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12893, ''Principles for Federal Infrastructure Investment,'' issued on January 26, 1994, notes that ''[a] well-functioning infrastructure is vital to sustained economic growth, to the quality of life in our communities, and to the protection of our environment and natural resources.'' The Executive Order goes on to state that ''[o]ur Nation will achieve the greatest benefits from its infrastructure facilities if it invests wisely and continually improves the quality and performance of its infrastructure programs.'' The first step recommended in the Executive Order is ''Systematic Analysis of Expected Benefits and Cost.'' The Executive Order advises that in performing this systematic analysis, ''benefits and costs should be measured and appropriately discounted over the full life cycle of each project. Such analysis will enable informed tradeoffs among capital outlays, operating and maintenance costs, and nonmonetary costs borne by the public.''

On July 11, 1994, FHWA published an interim policy statement on LCCA in the Federal Register (59 FR 35404). An important objective of that policy statement was to implement life cycle cost provisions of Executive Order 12893. The FHWA also requested comments on potential problems in implementing provisions of the policy and specific needs for training and technical assistance to apply LCCA.

Discussion of Comments

The FHWA received a total of 40 comments on the interim LCCA policy statement. Twenty-two were submitted by or on behalf of State departments of transportation and 18 were submitted by industry groups, consultants, and other private sector organizations. The overwhelming majority of comments expressed the sentiment that LCCA has the potential to contribute to improved investment decisions.

Comments on the interim LCCA policy statement primarily discussed two broad areas: implementation of the policy and technical issues in applying LCCA. The comments are summarized below.

Implementation Issues

Several comments questioned whether a LCCA should be mandated for some or all projects and whether sanctions would be applied for failure to conduct required LCCAs according to the principles set forth in the policy statement. Some commenters, however, supported making LCCA mandatory. Advocates for Auto and Highway Safety, for instance, asserted that ''[o]nly if LCCA is made a condition of funding approval, especially at the individual project level, particularly on the NHS, will this decisionmaking approach gain credibility and also produce the long-term safety and mobility benefits that are naturally generated by selection of high-quality, durable highway and bridge designs.'' The National Asphalt Paving Association declared that ''the Federal Government needs...to take a leadership role in clearly defining a standardized format in which all users apply a uniform solution approach to solve LCCA problems. Unless this is accomplished, analytical LCCA chaos will reign.''

Most comments that addressed the issue, however, were opposed to an LCCA requirement. Many State highway agencies expressed concerns about the potential burden associated with LCCA requirements, especially if detailed analyses were required for all improvements. Several States suggested that thresholds be established below which an LCCA would be optional. Recommended thresholds ranged from $1 million to $10 million. Other suggestions included requiring an LCCA only on NHS projects or requiring LCCA only for certain elements of a project. Some commenters recommended that the policy statement not establish new LCCA requirements, but rather provide broad policy guidance on principles of good practice. ''FHWA should act in the LCCA area as a valued technical advisor to the States, * * * but FHWA should not force solutions and approaches upon the states * * * no sanctions should be imposed on a state by virtue of not undertaking LCCA in the form set forth by FHWA.''

One industry organization and approximately half the States commenting on the interim LCCA policy statement cautioned that an LCCA should be only one factor in the decisionmaking process. For instance, the North Dakota Department of Transportation pointed out that an ''[e]conomic analysis of alternatives has long been a tool for the administrator and engineer to use in project level decisions. However, it is an inexact science. The process is rife with assumptions on discount rates and future costs. Managers know that it is only one tool, among many, that can be used to narrow down alternatives to consider and decisions to make * * *. It shouldn't be given any greater consideration than other factors.'' The FHWA understands that whether or not a State uses formal LCCA or less-formal methods for deciding among investment alternatives, uncertainties about future costs and performance remain and must be factored into the decisionmaking process. To ignore them is worse than to acknowledge the uncertainties and attempt to understand their influence on long term costs.

Suggestions were made that LCCA implementation should be phased in, to provide sufficient time for technical assistance in estimating user costs, discount rates, maintenance costs, etc. States with adequate cost and performance data could apply the technique and show other States how it can be used in the decisionmaking processes.

Several comments suggested that LCCA may be appropriate for project level decisions, but that it is not suited for network level decisions. Some suggested that other types of economic analysis such as multi-objective programming and benefit-cost analysis may be more appropriate for some decisions. When discussing other economic analysis techniques, these comments generally failed to recognize that each of these economic analysis methods usually requires consideration of future benefits and costs, which is at the heart of an LCCA.

Technical LCCA Concerns

A number of comments recommended clarifying the relationship between the design life and the analysis period in the final policy statement. Definitions of these two terms vary slightly from reference to reference, but design life is generally understood to reflect the expected service life of an improvement. The analysis period for an LCCA generally should extend through the time when reconstruction of the facility would be required. Relatively long

analysis periods help to assure that life cycle costs for the full range of reasonable investment alternatives, including eventual reconstruction of the facility, are considered.

Several comments expressed the concern that the analysis periods discussed in the interim LCCA policy statement were too long. For instance, one State questioned whether 30 years was too long for a simple overlay project, and a construction firm commented that a design life of 75 years was too long for most hydraulic structures and could result in the construction of obsolete facilities. The interim policy statement suggested these periods as minimum *analysis periods*, not minimum design lives. As noted above, the analysis period is generally longer than the design life of an improvement and should extend through the time when facility reconstruction would be required. Thus for pavements, the analysis period may extend through several overlay and rehabilitation cycles and include reconstruction as one investment alternative, depending on the age and condition of the facility.

Discount Rates

Several comments discussed the use of discount rates in LCCA. Some supported relying on Office of Management and Budget (OMB) Circular A–94 as the basis for setting discount rates, but one comment indicated that Circular A–94 is ambiguous about how to select the appropriate discount rates. One comment recommended that FHWA's LCCA policy be more prescriptive on the discount rate to be used and that explicit procedures for determining the discount rate be part of the LCCA policy rather than simply referencing OMB Circular A–94. Another comment suggested that definitive guidance should be given to determine the appropriate discount rate similar to guidance included in the interim policy statement on analysis periods for different types of improvements. One comment suggested that regional discount rates be developed to reflect differences in regional economic conditions. Yet another comment said that too much emphasis has been placed on the discount rate and that many other uncertainties are more important.

User Costs

The inclusion of user costs in an LCCA generated many comments, the most frequent of which were the difficulty in estimating user costs, the need for technical assistance in this area, and suggestions that user costs not be required in an LCCA until technical advisories are available. A few comments raised concerns that user costs could overwhelm other costs in the analysis. Several recommended that user costs be excluded from LCCAs because of the difficulty of estimating user costs and the fear that including user costs would favor urban projects over rural projects. Regarding this latter point, inclusion of user costs in benefit-cost or other types of economic analysis used in developing annual or multiyear transportation improvement programs could favor urban projects, but at the project level, including user costs in an LCCA would only affect project design and related decisions, not where the projects are located.

The FHWA believes that since user cost savings are the single most important benefit in justification of most highway improvements, then, it follows, that user costs should be included in any LCCA.

Training and Technical Assistance

There were many comments concerning the need for technical assistance, not only in the selection of discount rates and the estimation of user costs, but also in estimating the service life of improvements and future maintenance and rehabilitation costs. The FHWA has included an LCCA module in its course on value engineering, and is developing additional training and technical advisories that should be available.

Discussion of Comments

Since the interim LCCA policy statement was published in July 1994 and comments submitted to the docket, several legislative and programmatic changes have occurred that affect LCCA requirements. On November 28, 1995, the NHS Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568 (1995)) was enacted. Section 303 of that Act entitled, ''Quality Improvement,'' modified section 106 of title 23, United States Code (U.S.C.), by adding a new subsection (e) entitled ''Life-Cycle Cost Analysis.'' Subsection 106(e)(1) of title 23, U.S.C. now directs the Secretary to establish a program that requires States to conduct an LCCA for each NHS project having a usable project segment costing $25,000,000 or more. This subsection further defines LCCA as ''a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future cost, such as maintenance, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.''

Both the House and Conference Committee reports on the Act indicate that the basic intent of requiring an LCCA on higher-cost Federal-aid NHS projects is to, ''reduce long-term costs and improve quality and performance.'' Although the House Committee report language indicates a desire for the Secretary to specify uniform analysis periods and to promote uniform use of discount rates as established by the OMB Circular A–94, the Conference Committee report language suggests that the Secretary should not prescribe the forms of life cycle cost analysis that a State must undertake. Further, the Conference Committee report states that the intent of section 303 is to limit the Secretary's ability to *require* life-cycle cost analysis to high cost NHS usable project segments.

The NHS Act did not rescind life-cycle cost requirements established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1958, 1964) and found in 23 U.S.C. § 134(f)(12) and § 135(c)(20). These sections specifically require consideration of ''the use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement.'' The potential benefits of conducting LCCA in support of decisions on significant highway investments that fall below the $25 million threshold established by the NHS Act could be significant.

The FHWA has issued guidance advising its field offices to encourage States, at the highest levels, to consider life cycle costs in making major investment decisions. This guidance suggests several sources of technical information on performing an LCCA, and indicates additional LCCA work that is underway including a National Cooperative Highway Research Program (NCHRP) Project entitled *Life-Cycle Cost Analysis of Bridges* which will be available in 1998, technical guidelines for the application of LCCA to pavement design, and a demonstration project on the use of probabilistic life-cycle cost analysis in pavement design that will be available in early 1997.

Section 205 of the NHS Act, ''Relief From Mandates,'' suspended the requirement that States implement the pavement, bridge, and other management systems established by ISTEA and stipulated that ''[a] State may elect, at any time, not to implement, in whole or in part, 1 or more of the management systems.'' Section 205 also states that ''[t]he Secretary may not impose any sanction on, or withhold any benefit from, a State on the basis of such an election.'' With implementation of pavement and bridge

management systems rendered optional, use of LCCA in connection with those systems will be at the State's election, except for those projects on the NHS costing $25,000,000 or more.

Provisions of the NHS Act pertaining to LCCA generally are consistent with the majority of comments received on FHWA's interim LCCA policy. The Act and accompanying Committee report language recognize the importance of conducting LCCAs for the highest cost NHS projects. The $25 million threshold at which LCCA becomes mandatory for Federal-aid funding is higher than thresholds suggested in docket comments which ranged from $1 million to $10 million, but States will be encouraged to consider life cycle costs for other high cost NHS projects that do not meet this threshold. Language in the Conference Committee report stipulating that no particular form of LCCA is to be prescribed also is consistent with most of the docket comments and with the intent of the interim policy statement as well. Principles enunciated in the interim policy statement were intended to reflect good practice. These principles recognize that flexibility in approach may be necessary to account for unique project characteristics. Guidance issued to FHWA field offices following passage of the NHS Act states that ''[t]he FHWA Division Offices should not prescribe the forms of LCCA that a State undertakes. The division offices should, however, assure that LCCA are consistent with the established fundamental principles of good/best practice * * * [T]o reflect good/best practice, an LCCA should have sufficiently long analysis periods to reflect long term cost differences associated with reasonable investment alternatives, employ accepted discount rates, and address the inherent variability in input parameters.''

Because of the large potential benefits of LCCA, which were recognized in comments to the docket and in Committee reports on the LCCA provisions of the NHS Act, the FHWA continues to develop technical guidance on the application of LCCA to pavements, bridges, and other types of highway improvements. An overall reference document on LCCA, along with examples of the application of LCCA for different types of improvements, is being developed and will be available by the end of 1996. As noted above, guidelines and a demonstration project on the application of LCCA to pavement design are being developed and an NCHRP project on the application of LCCA to bridges is underway as well. As additional training and technical assistance needs are recognized, the FHWA will fill them.

Policy

This policy statement sets forth principles of good practice for the application of life-cycle cost analysis to highway and related infrastructure investment decisions. The FHWA fully supports and promotes sound economic analyses of highway investment alternatives that consider relevant costs and benefits over the full life of the facility. States and local agencies are encouraged to follow these principles in evaluating highway investment alternatives. Alternative forms of LCCA are acceptable if they are consistent with principles of good practice contained in this statement.

1. Life-cycle costs are important considerations along with budgetary, environmental, safety, and other factors in highway investment decisions. Investment alternatives having the least *net* cost (or the greatest *net* benefit) cannot be identified without considering streams of discounted benefits and costs over the entire life of the investment. Especially in periods of tight budgets, it is important to use life cycle cost analysis, value engineering, and other appropriate techniques to maximize the return from investments of scarce highway resources. The importance of considering life cycle costs in infrastructure investment decisions was emphasized in the President's Executive Order 12893, ''Principles for Federal Infrastructure Investments.''

2. Life-cycle cost analysis principles involving the systematic evaluation of costs and benefits over the life of highway improvements have been utilized in benefit-cost analysis, cost-effectiveness analysis, and other economic analysis techniques for many years. Continued use of these principles can help reduce costs of providing essential highway services that stimulate our economy and enhance our quality of life.

3. Life cycle costs should be considered in all phases of construction, maintenance, and operation. A project's design will affect its initial construction cost as well as future maintenance and rehabilitation costs. The initial design can affect not only the frequency of required maintenance, but costs of performing maintenance as well. Whether as the result of formal value engineering studies or less formal evaluation of design alternatives, small changes in design that facilitate maintenance and operations may pay for themselves in long-term cost savings.

4. Analysis periods used in LCCAs should be long enough to capture long-term differences in discounted life-cycle costs among competing alternatives and rehabilitation strategies. The analysis periods should cover several maintenance and rehabilitation cycles and, depending on the condition and age of the facility, may cover reconstruction of the facility as well. Analysis periods for improvements on Interstate and other NHS highways generally should be longer than for improvements on lower order roads, reflecting the NHS's greater importance.

5. All significant differences in agency and user costs anticipated during the analysis period should be considered in the analysis. Agency costs should consist of initial construction costs, future maintenance and rehabilitation costs including traffic control costs and costs of special construction procedures to maintain traffic, and agency operating costs for such things as tunnel lighting and ventilation. Where the agency operating a facility is not the one making the investment decision, it is important for the funding agency to include operating costs borne by all organizations responsible for operating the facilities. User costs to be considered in an LCCA generally include vehicle operating costs, accident costs, and delay-related costs incurred throughout the analysis period. Increased costs due to deteriorated riding surfaces, circuitous routings, and accidents and delays around and through work zones are important cost considerations.

6. While there may be considerable uncertainty about the life of an improvement, future traffic using the facility, future maintenance and rehabilitation costs, user operating and delay costs, the appropriate discount rate to use, and other elements of LCCA, these factors should all be considered in the analysis. Regarding uncertainty, Executive Order 12893 indicates that ''[w]hen the amount and timing of important benefits and costs are uncertain, analyses shall recognize the uncertainty and address it through appropriate quantitative and qualitative assessments.'' These assessments may include sensitivity analysis, probabilistic or risk analysis techniques, expert panels, or other methods for estimating the degree of uncertainty underlying key LCCA factors and the influence of that uncertainty on the choice of investment alternatives. Even if there is a relatively high degree of uncertainty about key LCCA factors, it is better to try to evaluate that uncertainty than to ignore it.

7. Future agency and user costs should be discounted to net present value or converted to equivalent uniform annual costs using appropriate discount rates. Discount rates selected should be consistent with guidance provided in OMB Circular A–94.

Technical advisories on these and other technical issues in the application of LCCA will be issued by FHWA in the future.

Authority: 23 U.S.C. 315; Pub. L. 102–240, sections 1024 and 1025 (December 18, 1991); Pub. L. 104–59, section 303 (November 28, 1995); 49 C.F.R. 1.48.

Issued on: August 29, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–23870 Filed 9–17–96; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board

Sunshine Act Meeting; Board Conference

TIME AND DATES: 10:00 a.m., September 24, 1996.

PLACE: Hearing Room A, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: Finance Docket No. 30186 (Sub-No. 2),*Tongue River Railroad Co.—Rail Construction and Operation—Ashland to Decker, Montana.*

STB Ex Parte No. 527,*Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings.*

STB Ex Parte No. 541,*Railroad Contracts.*

STB Docket No. 41826,*National Association of Freight Transportation Consultants, Inc.—Petition for Declaratory Order.*

CONTACT PERSONS FOR MORE INFORMATION: Dennis Watson, Office of Congressional and Press Service, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23897 Filed 9–13–96; 12:05 pm]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 33046]

Sacramento-Placerville Transportation Corridor Joint Powers Authority—Acquisition Exemption—Certain Assets of Southern Pacific Transportation Company

Sacramento-Placerville Transportation Corridor Joint Powers Authority (JPA) has filed a notice of exemption to acquire approximately 13.7 miles of rail line owned by Southern Pacific Transportation Company (SP) extending between milepost 94.3 at 65th Street in Brighton, CA, and milepost 108.0 at Nimbus, CA, in Sacramento County, CA. SP will retain the exclusive right and obligation to provide rail freight service on the trackage to be acquired. JPA will not operate any rail freight service on that trackage.[2]

JPA expects to consummate its acquisition on or after September 4, 1996.

Any comments must be filed with the Board and served on Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void*ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 12, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23898 Filed 9–17–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] JPA has simultaneously filed in this docket a motion to dismiss the notice of exemption to obtain a jurisdictional determination from the Board regarding JPA's prospective common carrier status.*See State of Maine, Department of Transportation—Acquisition and Operation Exemption—Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991). That motion will be the subject of a separate decision by the Board.

Surface Transportation Board [1]

[STB Docket No. AB–444X]

Lamoille Valley Railroad Company—Abandonment and Discontinuance of Service Exemption—in Franklin and Lamoille Counties, VT

Lamoille Valley Railroad Company (LVRC) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon and discontinue service over 44.4 miles of railroad line from railroad milepost 95.324, in Swanton, to railroad milepost 94.288, in Swanton, and from railroad milepost 92.000, in Highgate, to railroad milepost 48.614, in Morrisville, located in Franklin and Lamoille Counties, VT.

LVRC 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; (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 18, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2]

[1] The ICC Termination Act of 1995, Pub. L. 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-*

Continued

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 30, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 8, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: David H. Anderson, Esq., 288 Littleton Road, Suite 21, Westford, MA 01886.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

LVRC 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 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23857 Filed 9–17–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on October 4, 1996 in Burlington, Vermont. The session will be held from 8:30 a.m. to 12:30 p.m. at the Hotel Sheraton, 870 Williston Road, Burlington, Vermont (Exit 14W, Interstate #89). Tel.: 802–865–6600.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary for Enforcement, Room 4004, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: This is the final meeting of the current two-year term of the Committee. The provisional agenda to be considered at the meeting is as follows:

1. The Customs reorganization: a short look back at the first year.

2. Trade compliance: Customs' vision for the future.

3. Dialogue with Canadian Customs: a look at the revised processes of the two services.

4. Customs and the Business Anti-Smuggling Coalition.

5. The Customs broker regulations.

The provisional agenda may be modified prior to the meeting. Meeting time is based on this agenda. Members of the public wishing to confirm the final content of the agenda and the meeting time may do so by calling the information number one week prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than September 27, 1996 at 202–622–0220.

Dated: September 12, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–23868 Filed 9–17–96; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

Financial Management Service; Proposed Collection of Information: Voucher for Payment of Awards

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Voucher for Payment of Awards''.

DATES: Written comments should be received on or before November 18, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Morris, Credit Accounting Branch, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–7801.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Voucher for Payment of Awards.

OMB Number: 1510–0037.

Form Number: FMS 5135.

Abstract: This form is necessary to award payments to deserving awardholders. When funds are received from foreign Governments under claims programs, they are certified to Treasury for payment to awardholders. Treasury mails these vouchers to awardholders, who sign and return them, indicated that they are entitled to payment. These executed vouchers are used as basis for payment.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1400.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Comments: Comments submitted in response to this notice will be

---

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.

summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Dated: September 11, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–23858 Filed 9–17–96; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday
September 18, 1996

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Changes in Cost Accounting Practices; Proposed Rules

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Changes In Cost Accounting Practices

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cost Accounting Standards Board (CASB) invites public comments on proposed amendments to the regulatory provisions contained in Chapter 99 of Title 48. The proposed amendments would, when issued as a final rule, *revise* the current definitions, exceptions and illustrations governing changes in cost accounting practices; *exempt* certain changes in compliant cost accounting practices from the CASB's contract price and cost adjustment requirements, and *add* a new Subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances. The proposed subpart would establish contractor notification requirements for changes in compliant cost accounting practices and delineate the process for determining and resolving the cost impact due to a compliant change in cost accounting practice or a noncompliant practice on CAS-covered contract and subcontract prices and/or costs. The proposed subpart also includes unique applicability and agency waiver provisions for educational institutions.

DATES: Comments must be in writing and should be received by December 2, 1996.

ADDRESSES: Comments should be addressed to Mr. Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9001, Washington, DC 20503. Attn: CASB Docket No. 93–01N. To facilitate the CASB's review of your submitted comments, please furnish a three point five inch (3.5″) computer diskette copy of your comments in a format that is compatible with WordPerfect 6.1 or 5.1.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS), complete a prescribed rulemaking process. The process generally consists of the following four steps:

(1) Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper).

(2) Promulgate an Advance Notice of Proposed Rulemaking.

(3) Promulgate a Notice of Proposed Rulemaking.

(4) Promulgate a Final Rule.

This proposal is step three of the four step process.

B. Background

Prior Promulgations

Many commenters have identified the Board's regulatory coverage on ''changes in cost accounting practice'' as a matter requiring clarification and/or further coverage. On April 9, 1993, the CASB published a Notice in the Federal Register, 58 FR 18428, requesting public comments from interested parties concerning a Staff Discussion Paper on that topic. After consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) on April 25, 1995 (60 FR 20252) which proposed certain amendments to Chapter 99 of Title 48 that, when issued as a final rule, would revise the current definitions and illustrations governing changes in cost accounting practices. The ANPRM also included (1) proposed revisions regarding the language contained in the contract clauses for ''Full'' and ''Modified'' coverage, Federal agency responsibilities, and desirable change determinations; and (2) the proposed addition of a new Subpart that would establish contractor notification requirements for changes in a contractor's cost accounting practices and set forth the process for determining and resolving the cost impact on covered contract prices and/or contract costs when a contractor makes a change to a compliant cost accounting practice or follows a noncompliant practice.

Public Comments

Twenty-two sets of public comments were received in a timely manner from contractors, professional associations, Federal agencies, accounting organizations, and other individuals. A number of commenters supported the proposed amendments contained in the ANPRM. Some did not.

The more significant comments and concerns expressed by commenters are summarized below.

—*The proposed definitions are too broad.*

Several contractors and contractor industry associations opined that the proposed ANPRM definitions of the terms ''cost accounting practice'' and a ''change to a cost accounting practice'' are too broad. They believed that if the proposed definitions were adopted, the number of cost impact submissions would increase significantly in comparison to current levels. This, in turn, would dramatically increase administrative costs for contractors and the Government.

—*No consensus on an acceptable definition.*

Some commenters in the contractor community recommended retention of the existing definitions. Others acknowledged that a change in cost accounting practice occurs when existing pools and bases that contain different functions are combined but that an accounting change would not occur if two pools that contained similar functions were combined. Such contractors argued that an accounting change occurs only if ongoing functions are combined with dissimilar ongoing functions.

On the other hand, Federal commenters agreed with and supported the CASB's proposed amendments which specified that pool combinations, pool split-outs and transfers of functions were cost accounting practice changes.

—*Cost impact process.*

Both the contractor community and the Government agency representatives generally supported the Board's proposal to establish a new Subpart to delineate the notification and cost impact process.

The various comments, as well as the concerns, expressed by the commenters are discussed in greater detail under Section E, Public Comments. The Board Members and the CASB staff express their appreciation for the divergent views and constructive suggestions provided by the commenters. Their expressed concerns and suggestions aided the CASB's deliberations and formed the basis for the development of the new and/or revised proposed amendments which the Board has included in the Notice of Proposed Rulemaking (NPRM) being promulgated today.

Conclusion

After consideration of the public comments timely received, the Board concluded that contractors and Federal officials continue to interpret the Board's rules and regulations governing changes in cost accounting practice under CAS-covered contracts differently. There appears to be general support for the proposed cost impact process. However, even with the proposed promulgation of a more explicit and flexible cost impact process, some commenters remain concerned that the administrative costs associated with that process may still deter CAS-covered entities from initiating organizational changes that could result in more efficient and effective operations. They believed that if an organizational change were to also result in a change in cost accounting practice, the administrative costs that would still be required to initiate and conclude contract price and/or cost adjustments for existing contracts and subcontracts could negate the anticipated cost savings. Thus, it is argued, some contractors may not make the changes. The higher cost levels being experienced would continue to be passed on to their Federal customers in the form of higher proposed costs for future contracts.

As further explained in Section E, Public Comments, the Board proposes to resolve the described issues and concerns by amending Chapter 99 as follows:

—*Definitions:* Revise the definitions and illustrations governing cost accounting practice changes, for purposes of making it explicit that a change in the manner in which ongoing costs are accumulated in cost pools for allocation to final cost objectives constitutes a change in cost accounting practice, including the combination of existing pools, the split-out of an existing pool, or the transfer of an existing function from one pool to one or more different cost pools.

—*Exceptions:* Retain, with certain modifications, the existing exceptions for circumstances that are not considered to be a change in cost accounting practice, and, by adding a new exception for the transfer of an existing function to a different pool when the costs of that function are directly allocated back to the original pool for reallocation to final cost objectives.

—*Exemptions:* Establish new exemptions from the Board's contract price and cost adjustment requirements and cost impact process for changes in cost accounting practices that result from:

(i) Organizational changes involving changes in cost accumulation practices that result due to the transfer of functions or merger of cost pools which are undertaken for improved management efficiencies and effectiveness and which involve the physical realignment or reduction of facilities or personnel.

(ii) The consolidation of existing pools or the expansion of an existing pool into two or more pools when the merged or split-out pools accumulated pooled costs and the respective pools' accumulated allocation base activity amounts involve similar proportional and homogeneous relationships, before and after the change.

—*Cost Impact Process:* Add a new Subpart 9903.4 to establish the notification process to be followed by a contractor making compliant changes in cost accounting practices, the process for the submission of cost impact data for complaint changes and noncompliances, and the contract price and cost adjustment process for resolving the resulting cost impacts on individual CAS-covered contracts and subcontracts due to changes in compliant cost accounting practices and noncompliant practices.

Benefits

In the Board's judgment, regulatory guidance is needed to encourage consistency in the treatment of cost accounting practice changes and to reduce the amount of time required to resolve these actions. The Board believes that the application of the proposed provisions, as set forth in this NPRM, will clarify what constitutes a change in cost accounting practice and facilitate the notification, cost impact and contract price and cost adjustment processes attributable to changes in compliant cost accounting practices and noncompliant practices.

Consequently, the potential for disagreements over what constitutes a change in cost accounting practices will be significantly reduced.

Although the added rules and regulations proposed for Subpart 9903.4 are detailed and extensive, the Board remains convinced that they are necessary to promote consistency, equity and timeliness in the handling of cost impact proposal actions related to changes in accounting practices and noncompliances. The Board's proposal is expected to result in the reduction of administrative costs currently being experienced by contractors and Federal officials when contractor changes in cost accounting practices and noncompliances are processed.

Significant administrative cost savings should also evolve from the Board's proposal to exempt from the current contract price and cost adjustment requirements, changes in cost accounting practices that result from organizational changes made by management to attain more efficient and effective operations. This exemption should encourage, not discourage, such organizational changes in the future. Also, the proposed exemption for routine cost pool combinations or split-outs of ongoing functions that are not undertaken to primarily improve the economies and efficiencies of existing operations but meet the Board's proposed similarity criteria should further mitigate the administrative cost concerns expressed by commenters. As a result, these proposed regulatory amendments should generally further the goal of acquisition streamlining and reform, and should lead to much greater simplification of the contract administration process as related to the administration of the Cost Accounting Standards. These goals have been endorsed by the so-called ''Section 800'' Panel (*Report of the Acquisition Law Advisory Panel to the United States Congress*, January 1993).

Proposed Amendments

A brief description of the proposed amendments follows:

Part 9903, Contract Coverage

Changes in Cost Accounting Practices. In Subpart 9903.3, CAS Rules and Regulations, Section 9903.301 is amended to incorporate definitions for the terms ''Function'' and ''Intermediate cost objective.'' In Section 9903.302–1, Cost Accounting Practice, the definition is amended to incorporate proposed language changes and to add clarifying guidance. Section 9903.302–2, Change to a cost accounting practice, is revised to make explicit the types of changes that are a change in cost accounting practice, a new exception from the definition of a change in cost accounting practice is added and new exemptions from the contract price or cost adjustment provisions of CAS-covered contracts and the cost impact process for certain specified changes in cost accounting practices are added. The illustration of a change in cost accounting practice at 9903.302–3(c)(3) is replaced by a new illustration. In 9903.302–3(c) and in 9903.302–4, several illustrations are proposed to provide additional guidance regarding the revised definitions of the terms

''cost accounting practice'' and ''change in cost accounting practice.''

Contract Price and Cost Adjustments. In Subpart 9903.2, CAS Program Requirements, Subsection 9903.201–4 is amended to conform certain language in the ''Full'' and ''Modified'' contract clauses and to clarify the provisions governing changes made to a contractor's established cost accounting practices and changes made to correct noncompliant practices. Subsection 9903.201–6 is amended to establish criteria on when the Government can determine that a contractor proposed change in cost accounting practice is desirable and not detrimental. Section 9903.201–7 is revised to further clarify cognizant Federal agency responsibilities for administering CAS-covered contracts and subcontracts. A new Subpart 9903.4 is added to establish the notification and cost impact resolution process to be followed by a contractor and the cognizant Federal negotiator when a CAS-covered contractor or subcontractor changes a compliant cost accounting practice, fails to comply with an applicable Standard or fails to consistently follow its established cost accounting practices.

Summary Description of Proposed CAS Coverage

Changes in Cost Accounting Practices. Proposed for inclusion in 9903.301, are two definitions to clarify the terms ''Function'' and ''Intermediate cost objective'' as used in Part 9903. The proposed amendments to 9903.302–1(c), *allocation of cost to cost objectives*, specify that the systematic manner in which the costs of specific activities are accumulated and distributed to intermediate and final cost objectives constitutes a cost accounting practice. Additional subparagraphs are proposed to precisely set forth and amend the existing examples of cost accounting practices and to clarify what is meant by the selection and composition of the pools and the allocation bases.

The proposed amendments to 9903.302–2 expand the existing coverage by specifying that as used in Part 9903 and the applicable contract clauses, changes in cost accounting practices include pool combinations, pool split-outs and transfers of existing ongoing functions. The existing cost accounting practice exceptions cited in 9903.302–2 (a) and (b) are restated and modified in new subparagraphs. The transfer of an existing ongoing function from an existing indirect cost pool to a different pool when the costs are directly allocated back to the original pool for reallocation to final cost objectives and the costs of the function continue to be separately identified and accumulated in the original pool is proposed to be added as a new exception. A new subparagraph is added to exempt from the contract price or cost adjustment provisions of CAS-covered contracts and the cost impact process those changes in cost accounting practices that result from (1) organizational changes that involve improved management efficiencies and economies, and the physical realignment or reductions of facilities or personnel and (2) overhead and general and administrative (G&A) expense pool combinations or split-outs that meet proposed ''similarity'' criteria.

Within 9903.302–3, an introductory paragraph is added regarding the use of the illustrations provided, and introductory paragraphs (a), (b) and (c) are revised to clarify that the illustrations involve ''cost accounting practices'' that have changed. The illustration at 9903.302–3(c)(3) is proposed to be replaced by new illustrations depicting changes in cost accounting practice, consistent with the revised definitions. One illustrating the use of a different base for the allocation of indirect costs to final cost objectives. Additional illustrations are proposed to be added to 9903.302–3(c) and 9903.302–4 to depict various changes which do and do not result in changes in cost accounting practices when a contractor combines, eliminates or splits-out pools, transfers functions or when business combinations due to mergers and acquisitions occur.

Contract Price and Cost Adjustments. The proposed amendments, when promulgated as a final rule, will:

Contract Clause Provisions. Conform the contract clause language for ''Full'' and ''Modified'' coverage. The contract clause provisions are also revised to clarify the actions required when a contractor or a subcontractor is required to change a cost accounting practice or elects to replace an established practice with another compliant cost accounting practice and the corrective actions required if a contractor's estimated cost proposal was based on a noncompliant practice and/or actual contract cost accumulations were based on a noncompliant practice.

Desirable Changes. Provide criteria for determining when a contractor proposed change in cost accounting practice can be determined to be a desirable change that is not detrimental to the Government.

Cognizant Federal Agency Responsibilities. Require Federal agencies to:

—Establish internal policies and procedures for administering CAS-covered contracts when the agency is and is not the cognizant Federal agency for contractors performing agency contracts,

—Designate the agency official responsible for administering each CAS-covered contract and subcontract performing under agency awards,

—Delegate contracting authority to designated agency officials, as required, for the negotiation of cost impact settlements and associated contract price or cost accumulation adjustments, under the agency's CAS-covered awards.

—Concurrently settle, on a Government-wide basis, the cost impacts on all CAS-covered contracts and subcontracts affected by a contractor's or subcontractor's change in cost accounting practice or noncompliant practice.

Cost Impact Process. Establish a new Subpart 9903.4, Contractor Cost Accounting Practice Changes and Noncompliances, that details the methodology for determining required contract price or cost accumulation adjustments due to changes in a contractor's cost accounting practices and specifies the actions to be taken by the contractor and the cognizant Federal official (e.g., the contracting officer, administrative contracting officer (ACO) or other agency official authorized to act in that capacity), including the negotiation of cost impact settlements on behalf of the Government. The proposed Subpart provides coverage on the applicability and purpose of the Subpart, materiality considerations, definitions of terms related to the Subpart, procedures for changes in compliant cost accounting practices, and procedures for noncompliance actions. An illustrations section is also added to clarify the procedures set forth in Subpart 9903.4.

Proposed section 9903.405, Changes in Cost Accounting Practices, includes subsections on the following areas: notification on changes in cost accounting practices; determinations of adequacy and compliance; contractor cost impact submissions; and negotiation and resolution of the cost impact action.

Section 9903.405 includes required and suggested time frames by which the various actions in the cost impact resolution process should be completed. It provides a streamlined process which does not require submissions of cost impact estimates or contract price adjustments for every CAS-covered contract affected by a change in accounting practice. It provides flexibility to the cognizant Federal agency official in determining the level

of detail required for a cost impact proposal and materiality thresholds for required contract price and cost adjustments. To this end, it creates a two-step process to include (1) a general dollar magnitude estimate of the accounting change by contract type along with a cost impact settlement proposal, and if required, (2) a detailed cost impact proposal for contracts exceeding Government determined materiality thresholds. The proposed procedure encourages settlement of the cost impact process based on the cost impact settlement proposal to the maximum extent possible, without having to resort to a detailed cost impact proposal. It also provides for contract price adjustment on individual contracts only when the cost impact amount is material.

The Board has included clarifying rules for the use of the offset process. It allows for the use of the offset process to reduce the number of contract price and cost adjustments required as a result of a change in cost accounting practice, while still providing for adjustments of individual contracts when the cost impact amount is material. The rules clarify that offsets of increased costs against decreased costs should only be made within the same contract type.

Section 9903.405 also explains when and what action needs to be taken to preclude increased costs paid as a result of a voluntary change in cost accounting practice. It clarifies how increased costs are measured on firm fixed-price contracts as a result of a change in accounting practice. It also makes clear that action must be taken to preclude increased costs from being paid when the estimated aggregate higher allocation of costs on flexibly-priced contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs of firm fixed-price contracts subject to adjustment as a result of a voluntary change in accounting practice.

Proposed section 9903.406, Noncompliances, provides detailed rules and regulations for handling noncompliant actions. It outlines procedures for when the parties agree and disagree on whether a noncompliant condition exists. The Board has added separate sections on estimating practice noncompliances and cost accumulation practice noncompliances to clarify the actions, particularly to recover increased costs, that need to be taken under these different noncompliant conditions. It also provides procedures to be followed when the noncompliant condition does not result in material increased costs paid.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal because this proposal would impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which require the approval of OMB under 44 U.S.C. § 3501, *et seq.* The purpose of this proposal is to decrease the current burdens (including current paperwork burdens) associated with the administration of the Cost Accounting Standards by covered Government contractors and subcontractors.

D. Executive Order 12866 and the Regulatory Flexibility Act

This proposal would serve to clarify the Board's requirements and eliminate burdens associated with the administration of the Cost Accounting Standards by covered Government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Board has determined that this NPRM will not result in the promulgation of a ''major rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This NPRM is based upon proposed amendments to the CASB's rules and regulations that were made available for public comment through the Board's ANPRM that was published in the Federal Register on April 25, 1995, 60 FR 20252, wherein public comments were invited. The comments received and the Board's actions taken in response thereto are summarized in the paragraphs that follow:

Cost Accounting Practice Definitions, Exceptions, Exemptions

Comment: Changes in make or buy decisions do not equate to changes in cost accounting practice changes.

Response: Changes in make or buy decisions are not a change in cost accounting practice. This response presumes that the segment responsible for administering and performing the covered contract affected by a make or buy change will accumulate and report the actual costs of contract performance for in-house production and for goods and services acquired from other sources consistently in accordance with the performing segment's established and/or disclosed cost accounting practices. Changes in make or buy decisions are not subject to the CASB's rules, they are subject to applicable procurement regulations.

Comment: Changes in the place of contract performance do not equate to changes in cost accounting practice.

Response: The CASB's rules and regulations pertain to the performing contractor's or segment's established and, if required, disclosed cost accounting practices. The Board's rules and regulations presume that the proposed contract (or subcontract) work will be performed by the segment (or segments) identified in the contractor's cost proposal as the performing segment and that the costs of contract performance will be estimated, accumulated and reported by that proposed segment in accordance with that segments' established and, if required, disclosed cost accounting practices. Any change in a compliant cost accounting practice, failure to comply with an applicable CAS or failure to consistently follow established cost accounting practices, experienced by that performing segment may result in contract price or cost adjustments under the Board's rules and regulations.

When the proposed segment and performing segment are different because the contractor transfers the responsibility for administering and performing a covered contract to a different segment, the commenters are correct in that neither segment's cost accounting practices may have changed. However, the cost accounting practices used by the original segment to estimate, accumulate and report the costs of contract performance before the transfer will not necessarily be the same as the practices used by the different performing segment after the transfer. Of more importance is the fact that the specific costs being allocated to the transferred contract will be different.

Such changes in the place of contract performance are subject to applicable procurement regulations which may require consideration and/or Government approval for such transfers. Where the Government negotiates the conditions for and approves the complete transfer of responsibility for performing a covered contract from one segment to another segment, any contractor submission of estimated costs to complete the transferred contract or the subsequent submission of costs

incurred to complete the transferred contract would be estimated, accumulated and reported in accordance with the applicable performing segments' compliant cost accounting practices. In such cases, the contract price and cost adjustment provisions of the CAS contract clause contained in the transferred contract would not apply. Rather, the Board believes that the contracting parties must resolve the cost implications of such changes in the place of contract performance in accordance with applicable procurement regulations.

Comment: The Board's proposal should be treated as a rule change, not as a ''clarification.''

Response: The proposed amendments contained in this NPRM, when promulgated as a final rule, would apply prospectively to covered contracts and subcontracts awarded after promulgation of the final rule. However, the Board is also proposing that Subpart 9903.4 be applied to preexisting CAS-covered contracts and subcontracts if the contractor or subcontractor receives a CAS-covered contract or subcontract after Subpart 9903.4 becomes effective. Then, for compliant changes in cost accounting practices or noncompliant practices that occur after Subpart 9903.4 becomes effective, Subpart 9903.4 would apply to such preexisting contracts. The proposed coverage is intended to facilitate the resolution of the cost impact of compliant and noncompliant cost accounting practice changes affecting CAS-covered contracts awarded after the proposed Subpart 9903.4 is in effect. Where such changes in cost accounting practices and/or noncompliances also affect covered contracts awarded prior to the promulgation of Subpart 9903.4 as a final rule, the Board does not expect the contracting parties to comply with two separate cost impact processes for changes that occur after the effective date of the Board's anticipated final rule. Where changes in cost accounting practices and/or noncompliances do not become subject to Subpart 9903.4, the contracting parties would normally continue to follow the ''cost impact process'' incorporated in the preexisting covered contracts and subcontracts unless the contracting parties mutually agree to follow the Subpart 9903.4 procedures.

Comment: A number of commenters suggested that the terms ''function'' and ''intermediate cost objective'' be modified.

Response: The ANPRM definitions have been revised.

Comment: A number of commenters recommended that the proposed amendments to the introductory paragraph at 9903.301–1 be revised or deleted.

Response: The proposed ANPRM language has been deleted.

Comment: Several commenters suggested revision or deletion of the ANPRM proposed amendments to 9903.301–1(c) that would have changed the paragraph heading and content to highlight the importance of the term accumulation of cost. One commenter advocating that the basic definition not be revised stated:

* * * The triumvirate of measurement, assignment and allocation have served * * * well over the years. If changes are needed make them in the subparagraphs that follow.

Response: The proposed ANPRM language changes have been deleted. The proposed amendments being promulgated in the NPRM retain the traditional term ''allocation of cost to cost objectives'' in 9903.301–1(c). However, the Board continues to hold the opinion that the manner in which costs are accumulated is an essential cost accounting practice that is integral to the concept of cost allocation. Therefore, the Board is proposing certain modifications to make explicit that cost accumulation and the selection of pools used to accumulate specific costs are cost accounting practices. Additional subparagraphs are proposed to further explain what is meant by the selection and composition of the pools and bases.

Comment: Federal and industry commenters disagreed on whether the combination of existing pools or the transfer of an existing function from one pool to a different new or existing pool did or did not constitute a change in cost accounting practice. Several industry commenters acknowledged that a change in cost accounting practice occurs when existing pools and bases that contain different functions are combined but that an accounting change would not occur if two pools with similar functions were combined.

Such contractors argued that an accounting change occurs only if ongoing functions are combined with dissimilar functions.

Response: Although some industry commenters appeared to agree that a cost accounting practice change may occur when dissimilar functions are combined, the reason why a change in cost accounting practice occurred was not attributed to change in how specific costs were accumulated for subsequent allocation to specific final cost objectives. Assuming overhead Pool A accumulated the costs of two functions and overhead Pool B accumulated the cost of two other but relatively very similar types of functions, the commenters reasoned that there would be no change in a contractor's cost accounting practices if the two pools were combined. A corollary assumption was that the costs accumulated in both pools were allocated to final cost objectives by use of the same type of base activity accumulated at the two locations. Since the disclosure statement descriptions of the two pools before the change and the one pool after the change would be ''identical,'' the commenters appeared to infer that there was no change in cost accounting practice.

The arguments presented appear centered more on the commenters' limited interpretations of the Board's existing regulatory language which is used for determining when contract price or cost adjustments are required due to a change in a contractor's cost accounting practices rather than on the actual manner by which contractors accumulate specific costs in individual pools for their subsequent allocation to the specific final cost objectives included in the pools respective allocation bases.

The commenters did not acknowledge that the use of two pools would result in the allocation of the specific costs accumulated in each pool to only the specific final cost objectives included in each of the separate allocation bases that were applicable to each pool. Pool A costs would be allocated to only those individual final cost objectives that pass through Pool A's allocation base. After the pools are combined, the specific costs originally included in the two cost pools will now be allocated to different groupings of final cost objectives. Consequently, the specific costs would be allocated differently to individual final cost objectives. The specific indirect costs originally included in Pool A would be allocated proportionately to both the final cost objectives that would have been included in the allocation base for Pool A as well as to all of the final cost objectives that would have been included in the allocation base for Pool B. Pool B costs would experience the same type of change in cost allocation. It is the Board's opinion that the described type of change in cost accumulation (the use of one pool instead of two) is a cost accounting practice change because the method used to accumulate cost for the ''allocation of cost to cost objectives'' has changed. The change is that the specific ongoing costs that would previously have been accumulated and included in Pool A and allocated *only*

to the individual final cost objectives included in the *Pool A* allocation base would now be allocated to all of the individual final cost objectives that previously would have been included in the allocation base for Pools A *and B.* The specific costs that would previously have been accumulated and included in Pool B would experience the same type of change.

Furthermore, the commenters' concepts of ''similar'' and/or ''identical'' functions would prove difficult to establish and administer. To be similar, must the functional operations be identical? Must the product being fabricated or the service being performed be identical? How would disparate levels of cost incurred by separate functions be considered? If the costs accumulated in the original pools were not proportionally similar to the amounts of activity accumulated in their respective allocation bases would the functions being combined still be judged similar? Would the combination of the pools and their respective allocation bases be considered compliant under applicable Standards (e.g., under the homogeneity requirements of CAS 9903.418)?

The Board continues to believe that the combining of pools, whether they contain similar or dissimilar functions, constitutes a change in cost accounting practice. To avoid potential disputes and endless debate on what constitutes ''similar'' functions and when a change in cost accounting practice should require the adjustment of contract prices or costs, the Board, in the NPRM being promulgated today, proposes to resolve this matter by establishing definitions, exceptions and exemptions as follow:

1. *Definitions.* Amend the definitions of a cost accounting practice and a change to a cost accounting practice to state that the combination or split-out of an existing pool and/or the transfer of an existing function from one pool to a different pool, constitutes a change in cost accounting practice.

2. *Exceptions.* Retain the existing exceptions to a change in cost accounting practice but add a modification to indicate that different segments may apply different cost accounting practices when the same type of cost is incurred for the first time at each location. Add a new exception indicating the transfer of an existing function when the cost of that function is directly allocated back to the original pool for cost accumulation and reallocation to final cost objectives is not a change in cost accounting practice.

3. *Exemptions.* Add two exemptions from contract price and cost adjustments, for cost accounting practice changes resulting from:

(i) Functional combinations and transfers resulting from significant organizational changes made to achieve economies and efficiencies. This provision is proposed to provide a clear distinction between changes in operations and changes in cost accounting practices. It also responds to commenters' concerns that the Board's rules and regulations governing contract price and cost adjustments are viewed by some as an impediment to the implementation of more efficient and economical operations.

Where significantly lower levels of operating costs resulting from the physical realignment or reduction in facilities or personnel are reasonably expected to occur due to operational changes, attendant savings will normally be experienced in the long run under all of a contractor's work affected by the change, including existing and future CAS-covered contracts. Accordingly, the Board is considering the establishment of the proposed exemption based on the concept that if a cost accounting practice change results in such circumstances, it may not be necessary to require contract cost or price adjustments under existing CAS-covered contracts that are immediately affected by such operational changes. Whether specific operational changes qualify for this proposed exemption would be determined on a case-by-case basis by the cognizant Federal agency official.

The Board's existing requirements for contract price and cost adjustment would continue to be applied when there is no significant physical change in the contractor's ongoing operations and/or production activities but a change is made to the contractor's established cost accounting practices. In such cases, while a contractor's actual operations and overall total cost levels for those ongoing operations are not expected to change appreciably, the Board's rules and regulations would continue to require the adjustment of individual contracts for any significant greater or lesser allocation of cost to individual covered contracts that may occur due to the change in cost accounting practice.

Because changes resulting in improved economies and efficiencies would be exempt from the contract price and cost adjustment, the Board has deleted from this NPRM proposal, the ANPRM provision proposed for desirable changes involving changes made to improve the economy and efficiency of operations.

Public comments on this proposed exemption would be particularly helpful (see proposed 9903.302–2(c)(1)).

(ii) Overhead or G&A pool combinations where the cost variability between the original pools and the resultant pool or pools is relatively similar so that resulting cost allocations to individual final cost objectives will not be significantly affected by the change. Pools would be considered similar if certain proposed criteria are met. When met, this exemption would obviate the need for contractor preparation and submission of the cost impact documents required under Subpart 9903.4.

Comment: A commenter recommended the addition of an introductory provision to clarify that the illustrations in 9903.302–3 and 9903.302–4 are not all inclusive.

Response: Clarifying provisions have been added.

Contract Clauses

Comment: A commenter recommended that the definition of a cost accounting practice at 9903.302–1 be incorporated by reference into paragraph (a)(2) of the clause.

Response: To clarify that Part 9903 is incorporated in its entirety, including all of the definitions in Part 9903, paragraph (a) was revised to incorporate by reference the definitions and requirements of Part 9903. Paragraph (a)(4)(ii) was also revised to conform with the definition of the term ''increased cost'' contained in Subpart 9903.4.

Comment: A commenter recommended that paragraph (a)(3) should require the contractor to maintain a system for identifying all CAS-covered contracts and subcontracts by their periods of performance.

Response: The proposed requirement at 9903.401–1(b) for identifying covered contracts and subcontracts is incorporated into proposed paragraphs (a), (a)(4) and (a)(5) of the applicable contract clauses.

Comment: Revise paragraph (a)(4) to reference disclosed as well as established cost accounting practices and use the term ''cognizant Federal agency official'' in lieu of ''Contracting Officer.''

Response: The suggestions were adopted.

Comment: A commenter suggested that paragraph (c), access to records, be updated to include modern record storage mediums.

Response: The suggestion was adopted.

Comment: One commenter supported the proposed contract clause provisions

in paragraphs (a)(4) of the proposed contract clauses, requiring a Contractor to agree to price adjustments if CAS-covered subcontractors make required, voluntary or desirable changes to their cost accounting practices pursuant to the subcontracts' terms and conditions. One commenter felt there was no need to extend a contractor's liability for subcontractor changes. The commenter argued that prime contractors have no control over a subcontractor's cost accounting practices.

Response: Under CAS-covered contracts, prime contractors are responsible for inserting CAS flow down provisions into their subcontracts and for administering the covered subcontracts. If a subcontractor claims proprietary data is involved, the prime contractor can obtain the necessary data in summary form through the cognizant Federal agency official. However, the proposed provision provides for the adjustment of the prime contract price and/or higher-tier subcontract price if affected due to a lower-tier subcontractor's compliant change in cost accounting practice and/or noncompliance. The referenced provision was retained.

Desirable Changes

Comment: Several commenters recommended that the Board include as desirable changes, accounting changes required by law or regulation, as well as accounting changes required for conformity with changes in generally accepted accounting principles (GAAP) promulgated by the Financial Accounting Standards Board.

Response: The Board disagrees with the commenters. The original CASB concluded that all contractor proposed changes in cost accounting ''* * * for any reason * * *'' should be considered for contract adjustment and that if major changes in cost accounting practice were required in order for contractors to comply with an express provision of law, the Board would appropriately modify its Standards (Preamble J, Changes compelled by law or regulation (43 FR 9775, March 10, 1978)). Accounting procedures required to conform with laws, regulations or GAAP are generally not mandated for Federal contract cost accounting purposes. While a contractor must comply with such requirements for tax reporting purposes or financial statement reporting purposes to stockholders, such requirements are not *per se* a required cost accounting practices for Federal contracting purposes. Hence, any contractor desired change to an established cost accounting practice used to estimate, accumulate and report the costs of performing CAS-covered contracts and subcontracts remains subject to the Board's Standards, rules and regulations, including the CAS contract clause adjustment provisions, governing changes in cost accounting practices. Accordingly, each contractor change in cost accounting practice made for any reason must be considered on a case-by-case basis in order to determine whether the change is or is not desirable.

Comment: One commenter suggested that the proposed provision requiring the cognizant Federal agency official to determine that a change in cost accounting practice made to remain in compliance with a Standard to be a ''desirable'' change be deleted and treated instead as a ''required'' change.

Response: The contract clause provision referred to as a ''required'' change only pertains to a change in cost accounting practice that is made in order to comply with a new Standard, modification or interpretation thereto when it first becomes applicable to an existing covered contract through the award of a subsequent CAS-covered contract or subcontract. It does not apply to changes in cost accounting practices made subsequently by a contractor due to changed circumstances in order to remain in compliance with an existing Standard already applicable to an existing contract. By treating such subsequent changes as a ''desirable'' change, the contracting parties can negotiate equitable adjustments for covered contracts and/or subcontracts materially affected by subsequent changes that the cognizant Federal agency official has determined, on a case-by-case basis, were necessary in order for the contractor to remain in compliance with an applicable Standard. To distinguish subsequent changes from first time ''required'' changes, the proposed word ''required'' has been changed to ''necessary'' in the proposed provision.

Comment: Some contractors advocated that a change in cost accounting practice recommended by the cognizant Federal agency official and implemented by the contractor be considered a desirable change. A Federal agency recommended deletion of the proposed provision because in their view this provision would rarely be used and it would avoid contractor interpretations of discussions held with Federal officials as representing recommended changes.

Response: The word ''should'' has been changed to ''shall'' and a requirement for a written recommendation has been added.

Cognizant Federal Agency Responsibilities

Comment: A Federal agency recommended editorial changes to paragraph (a) and deletion of proposed paragraphs (b), (c) and (d) at 9903.201–7. The primary concerns were that the proposed amendments were already addressed by the Federal Acquisition Regulation (FAR), at FAR 30.6 and 42.3., and that the proposed responsibilities for obtaining funding may go beyond the control of the cognizant Federal agency official.

Response: The Board recognizes that the responsibility for administering CAS resides with the various Federal agencies, including the civilian agencies that are subject to CASB's rules and regulations. The Board, in reviewing the CAS cost impact process at a number of contractor locations, concluded that this process was generally not being accomplished in a timely or efficient manner. One contributing factor was that neither the Board's rules nor applicable agency regulations clearly set forth the complete process to be followed or actions to be taken. The Board is taking action today by proposing a precise yet flexible approach for the submission of cost impact data due to changes in cost accounting practices and noncompliances and for determining the resultant contract price or cost adjustments required under the Board's rules and regulations. The Board believes such specificity will facilitate the CAS administrative process, reduce administrative costs and improve timeliness. This proposal represents a first step toward the improvement of the process. Without more explicit implementing agency policies and procedures, however, the Board remains concerned that the timeliness of the contract price and cost adjustment process may not improve significantly and that the administrative costs associated with the cost impact process will not be curtailed.

Funding availability and the process for obtaining funds needed to effect CAS contract price adjustments is an example of where agency regulations for administering CAS should be made explicit. A recurring contractor concern with the Board's cost impact adjustment process was that contractors believe that the funds required to effect the necessary CAS contract price adjustments are generally not made available to the administering official. Contractors also believe that the lack of funding often was the determining factor in why a compliant change in cost accounting practice was not considered

to be a ''desirable'' change subject to equitable adjustment under the Board's rules.

The Board is fully aware that contract obligations can not be made in violation of applicable appropriations law and that funding availability is governed by each agency's administrative control of funds requirements. The proposed agency responsibilities are designed to permit each agency, in accordance with its funding systems, to establish appropriate internal procedures that are to be followed by programmatic, financial and procurement officials when additional funding is required to effect CAS contract price adjustments. While contract funds can be deobligated immediately, for equity's sake, under the Board's proposal, contract price increases and decreases due to a change in cost accounting or a noncompliance would be processed concurrently. The cognizant Federal agency official would not effect deobligations until the funding needed to increase contract prices under other contracts affected by the same change are made available for obligation by the affected agencies.

The Board believes the proposed amendments address the areas that need to be clarified by implementing agency regulations and that the proposed concurrent processing requirement does not go beyond the control of the cognizant Federal agency official. Accordingly, the proposed provisions have been retained. The ANPRM language in 9903.201–7 (a) and (d)(2)(iii) was revised based on the commenter's editorial suggestions and expressed concerns on funding.

Cost Impact Process

Comment: A number of commenters expressed the view that proposed rules for the cost impact process were too rigid and did not allow sufficient flexibility. Others feared that existing local agreements on cost impact methodology could not continue once the proposed rule becomes a final rule.

Response: The intent of the ANPRM was to place emphasis on materiality and to allow alternative methods with regard to resolving a cost impact due to changes in accounting practices. The Board believes that the frequent use of the concept of materiality throughout the proposed 9903.4; the allowance for use of ''other suitable techniques'' in 9903.405–5(c)(3) and 9903.405–5(d)(5); the flexibility in establishing appropriate materiality thresholds; and the allowance for alternative formats for the General Dollar Magnitude (GDM) and Cost Impact Settlement Proposal; provide sufficient latitude to the contracting parties to resolve a cost impact and does not constitute a ''rigid'' process.

Comment: Several commenters suggested that the GDM and Cost Impact Settlement Proposal formats included in the ANPRM be deleted since they may be construed to be required ''forms'' or the only acceptable formats by some cognizant Federal agency officials.

Response: The illustrated formats are not to be considered required ''forms'' or the only acceptable formats. They are included as an example of one acceptable presentation of a GDM and Cost Impact Settlement proposal. Inclusion of an acceptable format aids those cognizant Federal agency officials, as well as contractors, that have little experience with the cost impact process, particularly in the civilian agencies. To further emphasize that other formats may be used, the Board has added a clarifying sentence at 9903.405–4(a)(4) and substituted the word ''acceptable'' for ''suggested'' prior to the display of the illustrated formats.

Comment: One commenter suggested deletion of various provisions included in the ANPRM based on the view that they represented opinion or detailed instructions and do not belong in the Board's rule or regulation.

Response: The Board agrees in part and has deleted some, but not all, of the provisions suggested by the commenter.

Comment: A number of contractor respondent's requested that specific timing requirements be included in 9903.4 for the actions to be taken by the cognizant Federal agency official. They saw an inequity in specifying timing requirements for contractors, but not for Government officials.

Response: The Board expects that the various Federal agencies will establish appropriate regulations to implement the procedures and suggested time frames included in proposed Subpart 9903.4, and believes that such agency regulations are the appropriate place to detail specific administrative timing requirements for cognizant Federal agency officials. The Board encourages the Federal agencies to place appropriate emphasis on timeliness in completing the cost accounting change cost impact process in order to avoid the inefficiency problems caused by delays in the process which have been experienced in the past.

Comment: Other industry respondents requested a provision which would provide for an irrevocable presumption of adequacy and compliance of an accounting practice change in the event that the cognizant Federal agency fails to make a formal determination within the suggested 60 day period included at 9903.405(c)(i) in the ANPRM.

Response: The Board disagrees. A contractor's cost accounting practices must comply with applicable Cost Accounting Standards. Failure by Federal officials to act in a timely manner does not create a waiver from the Board's rules and regulations. As previously mentioned, the Board encourages timely action by all responsible parties, including Federal agencies. For this reason, the Board has retained, in the NPRM being promulgated today, suggested time frames for when actions are to be taken by the cognizant Federal agency official.

Comment: One commenter objected to the requirement precluding use of planned changes in cost accounting practices in price proposal estimates, claiming that contractor's can use changed practices for estimating immediately.

Response: The Board, in researching this issue, learned that a lack of consistency exists when contractors begin using a changed cost accounting practice to estimate costs in price proposals. Some used immediate implementation, while others waited until the cognizant Federal agency official made a determination of adequacy and compliance. The Board believes that a consistent and uniform approach is desirable and that waiting for an adequacy and compliance determination is the preferable method. Obtaining an adequacy and compliance determination prior to implementation will avoid the potential implementation of a noncompliant cost accounting practice when estimating costs in price proposals. The Board notes that the proposed period of delay in implementation of the new practice in only a maximum of 60 days. To make this requirement equitable and to prevent potential financial harm to contractors, the Board is also proposing to establish a new exemption from the voluntary change increased cost preclusion provisions for contracts negotiated between the notification date and effective date of a planned change in cost accounting practice. This new exemption appears at 9903.405–2(f) and 9903.405–5(d)(7).

Comment: Several commenters opined that requiring advance notification of a change in accounting practices made to comply with a new or revised Standard that would become applicable to existing covered contracts only through the subsequent award of a covered contract, i.e., a required change, was unreasonable, if not impossible. They suggested that notification be made sometime after the award of the contract which made the new or revised Standard applicable to a CAS-covered

contractor, rather than 60 days prior to the effective date of the new or revised Standard.

Response: The Board agrees that notification prior to the effective date of the Standard may not always be required or practical, but disagrees that notification should be delayed until after award of the contract which made the new or revised Standard applicable. The effective date of a new or revised Standard is the Standard's specified effective date after which a CAS-covered contractor must comply with the new or revised Standard when estimating costs for a contemplated contract, that if awarded, will make the Standard applicable to the contractor. Therefore, if a contractor's current practice does not comply with the new or revised Standard, the contractor must use a compliant practice in the first such price proposal submitted after the Standard's effective date. A decision to make this required change obviously must be done some time before the submission of the proposal. Clearly, if a contractor has used a compliant practice for estimating purposes which is different than an established practice due to a required change, it is not unreasonable to expect that the contractor will disclose this to the cognizant Federal agency official. Therefore, the Board proposes to require that advance notification of such required changes in cost accounting practice shall occur no later than 60 days prior to the submission of the price proposal in which the contractor must first use the required change to estimate costs for a potential CAS-covered contract, or other date to which both parties mutually agree.

Comment: Several commenters took exception to the requirement to use estimates-to-complete in lieu of original cost estimates for computing the cost impact due to a compliant change in cost accounting practices on individual contracts. One respondent commented that estimates-to-complete should only be used when a significant part of the contract effort has been performed.

Response: The Board believes that use of estimates-to-complete in lieu of original estimates better measures the true impact of a change in cost accounting practice because it applies the new practice only to the contract effort for which the new practice will be used for cost accumulation and reporting purposes. Distortions between planned contract performance and actual contract performance can lead to distorted cost impact computations if original estimates are used. The use of estimates-to-complete is also consistent with the prescribed methodology for pricing change orders which add and/or delete contract work. The Board acknowledges that in cases where little contract effort has been performed, there should be virtually no difference between using an estimate-to-complete as compared to the original estimate methodology.

Comment: One commenter stated that the computation and completion of a GDM was a difficult and costly exercise.

Response: Current Federal regulations already require the submission of GDM estimates by contract type and by agency, and have so for a long time. The Board's proposed GDM approach requires summary data only by contract type. The Board anticipates the existing requirement for summary data by agency would eventually be deleted from the procurement regulations because of the emphasis the Board is placing on the individual contract data included in the cost impact settlement proposal. Any agency having a CAS-covered contract that is significantly affected by an accounting change will receive adequate coverage and protection via the submission of a cost impact settlement proposal based on materiality thresholds. Although computing an accurate and reliable GDM may be difficult in some circumstances based on the complexity and number of accounting practice changes, the information is essential to the cognizant Federal agency official in determining the appropriate adjustments required to protect the financial interests of the Government when a change in cost accounting practice occurs.

Comment: A number of commenters suggested combining the GDM and Cost Impact Settlement Proposal into one consolidated submission.

Response: The GDM and the contractor cost impact settlement proposal submissions serve different purposes. The GDM is intended to provide summary data by contract type of the overall impact to the Government as a result of an accounting change. The cost impact settlement proposal is intended to provide a basis for resolving the cost impact proposal without requiring a detailed cost impact proposal. To streamline contractor submissions, the two may be combined provided that the GDM is separately presented on the first page of the combined submission.

Comment: One commenter objected to the requirement to submit additional contract data during the cost impact settlement proposal stage, suggesting that, if no settlement can be reached based on the data initially submitted, a detailed cost impact settlement proposal should be required.

Response: The Board believes that the interests of both the Government and CAS-covered contractors are served best if the data submission requirements are kept to a minimum. The Board visualizes instances where a contractor could supplement contract data included in the initial cost impact settlement proposal with a few additional contracts in order to provide sufficient information to resolve a cost impact. The proposed supplemental approach would be less costly and should result in a more timely resolution of a cost impact than if a contractor had to put together a separate and distinct detailed cost impact proposal having different and significantly more data requirements. The Board believes that once this process is put into actual practice, the superiority of the supplemental data approach over a detailed cost impact proposal will be borne out.

Comment: A number of commenters suggested switching the definitions of offsets and netting.

Response: Although never previously defined in a formal rule or regulation, the term ''offsets'' has acquired a connotation that most individuals familiar with the cost impact process have adopted over the years, i.e., the process of combining cost increases with cost decreases to arrive at a net smaller cost impact number than the individual contract cost impact amounts. The term offset has also taken on the concept of a technique used to reduce the number of individual contract price or cost adjustments that need to be made as a result of a change in cost accounting practice, or a failure to comply with cost accounting standards or established practices. The Board does not wish to disturb these accepted connotations and concepts. On the other hand, the process of determining to what extent increased costs may occur as a result of a voluntary change in cost accounting practices, although always required, has never been specifically identified. The Board believes that for clarity's sake, the process should be defined, and has dubbed this process ''netting''.

Comment: Several commenters expressed the view that offsets should be permitted between different types of contracts.

Response: The proper application of offsets has long been a source of confusion and controversy. For this reason, the Board has chosen to make it explicit that offsets shall only be made within the same type of contract. The primary rule of offsets is that use of the

technique should not result in costs paid by the Government that are materially different from that which would result if all affected contract prices had actually been adjusted. This rule cannot be met if offsets are applied to different types of contracts, particularly between flexibly priced and firm fixed-price contracts. The Board believes that use of the offset technique will be minimized by the individual contract materiality threshold concept included in the proposed 9903.405.

Comment: One commenter asked if offsets will be limited to the ''all other contract'' category under the proposed rule.

Response: For single changes in cost accounting practices within an individual business unit or segment, offsets will in most, but not necessarily all, cases be limited to the ''all other contract'' category. The provision at 9903.405–5(b)(3) does allow for the offset technique to be applied to individual contracts, provided that it does not materially reduce the amount of the price adjustment to contracts exceeding the individual contract materiality threshold, or reduce the cost impact to these contracts to an amount below the threshold. For multiple changes within the same business unit, offsets are applied to the same contract to the extent that one or more changes may have an upward impact while other changes have a downward impact on the same contract, as provided by 9903.405–5(b)(4). Offsets are also applied between different business units or segments for changes that affect multiple segments to mitigate action that needs to be taken to preclude increased costs, as provided by 9903.405–5(b)(6).

Comment: One commenter suggested that the Board add an illustrative chart at 9903.405–5(d) to clarify what adjustments should or should not be made to the various types of contracts in order to preclude payment of increased costs when a voluntary change is made.

Response: The Board agrees that such a chart would provide useful clarifying information and has inserted a chart at 9903.405–5(d)(3).

Comment: One commenter suggested that the concept of ''potential increased cost paid'' be added to the definition of ''increased cost paid''.

Response: The Board finds no useful purpose to such a definition. The Board has defined increased costs as they relate to changes in accounting practices, cost estimating noncompliances and cost accumulation noncompliances. These definitions, when taken together, constitute potential increased costs paid. Increased costs paid occurs when the increased costs to CAS-covered contracts, as defined, is actually paid by the United States. Procedures described in 9905.405–5(d), 9903.406–3 and 9903.406–4 set forth action that can be taken to preclude or reduce the payment of increased costs, as well as appropriate action to recover the increased costs once they have been paid.

Comment: One commenter argued that the Board had exceeded its authority as a result of the definition of increased cost on firm fixed-price contracts and the method prescribed to recover such increased costs, and further suggests that such recovery is tantamount to an unauthorized penalty.

Response: The Board strongly disagrees with these arguments. When a downward price adjustment is made to a fixed-price contract to reflect a lesser allocation of costs resulting from a change in cost accounting practices, no penalty is placed on the contractor. The adjustment does no more than reduce the contract price so that it is consistent with those accounting practices actually used during contract performance. Without this adjustment, the contractor would receive an unjustified enlargement of profit due merely to a shift of costs caused, not by the elimination of costs, but by a change in cost accounting practices. Clearly, payment of this unwarranted windfall represents increased costs to the Government. The contract price adjustment provisions for changes in cost accounting practices included in the CAS contract clause are meant to preclude the payment of these increased costs, as well as to adjust contract values so that they are consistent with the contract costs accumulated during contract performance.

Comment: One commenter asked that the Board develop and prescribe specific materiality threshold amounts for contract price adjustment purposes.

Response: Consistent with the Board's decision not to specify precise amounts in the materiality provisions at 9903.305, the Board believes the establishment of specific materiality threshold amounts for adjustments of contract prices due to changes in cost accounting practice is best left to the cognizant Federal agency official based on the individual circumstances involved and discussions with the contractor.

Comment: A number of commenters expressed concern about the difficulty in obtaining the funding to effect the contract price adjustments negotiated for changes in cost accounting practices.

Response: Although the funding issue is a legitimate concern, it is one which all of the contracting parties that are affected by changes in cost accounting practices must work with the cognizant Federal agency official to overcome.

Comment: Several contractor commenters expressed the view that a noncompliance that does not result in a material increase in costs to the Government should not be considered a noncompliance, and asked that the provision on Technical Noncompliance at 9903.406–5 be deleted.

Response: The Board does not agree with the commenters' position. Once a cognizant Federal agency official determines that a practice is noncompliant, there is no reason why some subsequent determination has to be made again in the future. Any significant increased costs paid as a result of the noncompliant condition in the event that the impact of the noncompliance subsequently becomes material, should be immediately recoverable by the Government with applicable interest. This serves to discourage the continued use of a noncompliant practice, regardless of materiality and best protects the interests of the Government when a noncompliant practice exists.

Restructuring Activities

Comment: The ANPRM will discourage restructuring activities.

Response: Some commenters *erroneously* interpreted the Board's proposal to mean that the net savings attributable to restructuring activities will be included in the measurement of the cost impact of any cost accounting practice changes resulting from the restructuring activities. The cost impact process deals only with the greater or lesser allocation of total ongoing costs to individual contracts resulting from a change in cost accounting practice. Savings due to reductions in the costs of ongoing functions or changes in the level of costs are not subject to adjustment under CAS and are not to be included in cost impact estimates.

Educational Institutions

Comment: A university suggested that the Board comment on how the cost impact process should be handled during periods when predetermined rates are in effect. When would GDM and Cost Impact Settlement Proposals be required? The Board should consider the effect of the proposed regulation on educational institutions if extended to grant and cooperative agreements awards under OMB Circular A–21.

Response: In a predetermined rate environment, the basic underlying

assumption is that the educational institution's cost accounting practices, e.g., the classification of a cost as either a direct cost or an indirect cost, will be followed consistently during the multi-year periods covered by such rates. The predetermined indirect cost rates are predicated upon cost data for one base year which may be adjusted to reflect future year cost levels for the periods to be covered. The base year data is accumulated and forecasted in accordance with the institution's established cost accounting practices.

Once established, the predetermined indirect cost rates are applied to appropriate estimated base costs to determine the estimated indirect costs included in cost proposals for potential awards. After award, as sponsored agreements are actually performed, the predetermined rates are also applied to the actual base costs that are accumulated in accordance with the institutions's established cost accounting practices.

To be consistent, the cost accounting practices used to determine indirect pool costs and allocation base costs forecasted for the covered years must be followed consistently when proposal costs are estimated and when actual costs are accumulated and reported during the covered periods. Should there be any changes in cost accounting practices (e.g., if an indirect cost were to be reclassified as a direct cost), while a sponsored agreement is actually performed, the set of assumptions or conditions regarding the composition of the pools and allocation bases used to establish the predetermined rates and the estimated cost proposal would be changed to a different set of conditions. In such cases, the continued application of the same predetermined indirect cost rate in such circumstances could result in the inconsistent allocation of costs and inequitable claims for the reimbursement of actual costs. A contract price or cost adjustment may be required for such changes under the Board's rules.

To minimize or preclude over- or under-payments resulting from ''compliant'' changes in cost accounting practices, educational institutions are required to notify their cognizant Federal agency officials of any planned changes in cost accounting practice. If necessary, appropriate revisions to reflect the cost impact of a change in cost accounting practice on a predetermined rate should be effected promptly. This could minimize or preclude the need for subsequent cost or price adjustments attributable to a compliant accounting change.

The Board agrees with the commenter that the cost impact process should be uniformly applied in an efficient and economical manner for all Federal awards affected by a compliant cost accounting practice change or a noncompliance. Therefore, certain unique provisions, including specified agency waiver authority, applicable solely to educational institutions that are subject to OMB Circular A–21, have been included in the NPRM being promulgated today.

Comment: One university suggested that the contract clause for educational institutions at 9903.201–4(e) also be updated.

Response: The referenced clause became effective on January 9, 1995, and the Board does not believe sufficient time has elapsed to warrant its revision at this time. Further comments on the desirability of conforming the clause with the language being proposed today for the ''Full'' and ''Modified'' clauses are requested. If there is support for such revision, the Board will consider updating the clause in the final rule.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this NPRM. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section of this NPRM. Computer diskette copies of your comments in WordPerfect 6.1 or other format that is compatible with WordPerfect will be appreciated.

The Board is considering the establishment of certain new requirements that it believes would clarify and facilitate the overall process governing changes in cost accounting practices. Therefore, the Board invites interested parties to specifically comment on the following NPRM provisions being proposed today:

Changes in cost accounting practices:

—Proposed 9903.302–2(c) would exempt certain changes in cost accounting practices from contract price or cost adjustment and the cost impact process.

Contract price and cost adjustment process:

—Proposed 9903.201–6(b) establishes new criteria for determining when a voluntary change in cost accounting practice may be treated as a desirable change.

—Proposed 9903.405–2(b)(1) requires CAS-covered contractors to notify the Government of and fully disclose changes in cost accounting practices that are required to comply with a new or modified Standard or interpretation thereof 60 days prior to the submission of a price proposal in which the contractor first uses the required change to estimate costs for a potential CAS-covered contract or subcontract.

—Proposed 9903.405–2(b)(2) establishes new notification requirements for voluntary and desirable changes.

—Proposed 9903.405–2(f) provides a new equitable adjustment provision for contracts negotiated within 60 days after a contractor notifies the Government of a voluntary change that would otherwise be subject to a CAS-covered contract's no increased cost provision.

—Proposed 9903.405–4(b) provides for the use of a cost impact settlement proposal that would permit early resolution of the estimated cost impact in lieu of the use of a detailed cost impact proposal.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for part 9903 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–4 is proposed to be amended by revising paragraphs (a)(1) and (c), and the contract clauses set forth in paragraphs (a) and (c), to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards—Full Coverage.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Full Coverage, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this subsection is used.

* * * * *

COST ACCOUNTING STANDARDS—FULL COVERAGE

(AUGUST 1996)

(a) The provisions of Part 9903 of 48 CFR, Chapter 99, including the definitions and requirements contained therein, are

incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement as required by 9903.202. The practices disclosed for this contract shall be the same practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is materially affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with all CAS contained in part 9904, including any modifications and interpretations thereto, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any CAS, including any modifications or interpretations thereto, which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by Subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is materially affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is materially affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is materially affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be desirable change.

(5) Noncompliance. As required by Subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in Part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in Part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any books, records, documents, papers, or records, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. Unless the subcontract is exempt under 9903.201, the Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS, including any applicable modifications or interpretations thereto, in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that if the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(End of clause)

* * * * *

(c) *Cost Accounting Standards—Modified Coverage.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Modified Coverage, in negotiated contracts when the contract amount is over $500,000, but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2), unless the clause prescribed in paragraphs (d) or (e) of this subsection is used.

(2) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405 and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow disclosed and established cost accounting practices consistently.

COST ACCOUNTING STANDARDS—MODIFIED COVERAGE

(AUGUST 1996)

(a) The provisions of Part 9903 of 48 CFR, Chapter 99, including the definitions and requirements contained therein, are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) Disclosure. Disclose in writing the Contractor's cost accounting practices by submission of a Disclosure Statement, if it is a business unit of a company required to submit a Disclosure Statement, pursuant to 9903.202. The practices disclosed for this contract shall be the same practices currently disclosed and applied to all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) contract clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Changes in Cost Accounting Practices. Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any CAS-covered contract or subcontract, the change must be applied prospectively from the date of applicability to this contract and the Contractor's Disclosure Statement must be amended accordingly. If the contract price or cost of this contract is materially affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Compliance with Standards. Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating and

Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting For Unallowable Costs; and 9904.406, Cost Accounting Period; including any modifications or interpretations thereto, in effect on the date of award of this contract, or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed Certificate Of Current Cost Or Pricing Data. The Contractor shall also comply with any modifications or interpretations to such CAS which become applicable because of a subsequent award of a CAS-covered contract or subcontract to the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) Compliant changes in cost accounting practices. As required by Subpart 9903.4, provide timely notification of changes in disclosed or established cost accounting practices, provide data concerning the cost impact of such changes and:

(i) Required change. Agree to an equitable adjustment of the price of this contract as provided under this provision if the contract cost is materially affected by a change to a disclosed or established cost accounting practice which, pursuant to subparagraph (a)(3) of this clause, the Contractor or a subcontractor is required to make.

(ii) Voluntary change. Agree to an adjustment in the price or cost of this contract as provided under this provision if contract cost is materially affected by a voluntary change made by the contractor or a subcontractor; provided that no agreement may be made under this provision that will result in the payment of any increased costs by the United States in the aggregate for all of the contractor's or a subcontractor's CAS-covered contracts and subcontracts affected by the change.

(iii) Desirable change. Agree to an equitable adjustment of the price of this contract as provided in this provision if contract cost is materially affected by a change in cost accounting practice made by the contractor or a subcontractor that the cognizant Federal agency official finds to be a desirable change.

(5) Noncompliance. As required by Subpart 9903.4, initiate action to correct any noncompliance, provide data concerning the cost impact of the noncompliance and agree to an adjustment of the contract price or cost if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, including any modifications or interpretations thereto, or to follow any cost accounting practice consistently and such failure results or will result in any increased costs paid by the United States. Also, agree to the recovery of any increased costs paid by the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to price or cost adjustment, unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) Disputes. If the cognizant Federal agency official and the Contractor disagree as to whether the Contractor or a subcontractor has complied with an applicable CAS in Part 9904, including any modifications or interpretations thereto, an applicable provision or requirement in Part 9903 or as to any resulting price or cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) Access to records. The Contractor shall permit any authorized representatives of the Government to examine and make copies of any books, records, documents, papers, or records, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) relating to compliance with the requirements of this clause.

(d) Flowdown to Subcontracts. Unless the subcontract is exempt under 9903.201, the Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS, including any applicable modifications or interpretations thereto, in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that if the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted.

(End of clause)

3. Section 9903.201–6 is proposed to be revised to read as follows:

9903.201–6 Desirable changes.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clauses set forth in 9903.201–4(a), 9903.201–4(c) or 9903.201–4(e), the cognizant Federal agency official shall make a finding that the change is desirable, as defined at 9903.403, i.e., desirable and not detrimental to the interests of the Government.

(b) The determination as to whether or not a change in cost accounting practice is desirable should be made on a case-by-case basis in accordance with, but not limited to, the following criteria:

(1) A change in cost accounting practice shall be deemed to be desirable and not detrimental if the cognizant Federal agency official determines that, for a Cost Accounting Standard which the contractor has complied with, the change is necessary in order for the contractor to remain in compliance with that Standard.

(2) The cognizant Federal agency official shall determine that a change in cost accounting practice is desirable and not detrimental if the change from one compliant practice to another compliant practice was recommended in writing by the cognizant Federal agency official and the Contractor agrees to make the change.

(3) The cognizant Federal agency official's finding should not be made solely because of the financial impact of the proposed change on a contractor's or subcontractor's current CAS-covered contracts. A change may be determined to be desirable and not detrimental to the Government's interest even though costs of existing contracts may increase, provided there is a reasonable expectation that benefits will accrue to the Government in future awards.

4. Section 9903.201–7 is proposed to be revised to read as follows:

9903.201–7 Cognizant Federal agency responsibilities.

(a) The requirements of 48 CFR Chapter 99 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of Chapter 99 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts and/or subcontracts or more than one Federal agency are involved, the cognizant Federal agency official and affected agencies shall coordinate their activities in accordance with the responsibilities specified in paragraph (d) of this section. Agencies should discourage agency officials from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that aggregate contract price and cost adjustments required under CAS-covered contracts for changes in cost accounting practices or CAS noncompliance issues are determined and resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the

requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Agencies are urged to coordinate on the development of such regulations.

(c) Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts and subcontracts at each contractor and subcontractor business unit and the delegation of necessary contracting authority to agency individuals authorized to negotiate cost impact settlements under CAS-covered contracts, e.g., Contracting Officers, Administrative Contracting Officers (ACO's) or other agency officials authorized to perform in that capacity.

(d) *Responsibilities.*

(1) The cognizant Federal agency official shall:

(i) Make all required determinations for all CAS-covered contracts and subcontracts.

(ii) Coordinate with affected agencies when developing the Government's negotiation position regarding settlement of the overall cost impact and potential modification of CAS-covered awards, prior to actual negotiations.

(iii) Negotiate the cost impact settlement, in the aggregate, for all CAS-covered contracts and subcontracts materially affected by the change in cost accounting practice.

(iv) Inform the affected agencies of the negotiation results, by distribution of the negotiation memorandum.

(v) Request affected agencies to prepare implementing contract modifications and to obtain implementing subcontract modifications from their next higher-tier contractor, as appropriate. The modifications shall be predicated on the negotiated cost impact settlement reflected in the negotiation memorandum and are to be forwarded for signature by the contractor through the cognizant Federal agency official.

(vi) Concurrently, obtain contractor signatures for all contracts and subcontracts to be modified and distribute the executed modifications to the awarding agencies.

(2) Awarding agencies shall:

(i) Coordinate with and support the cognizant Federal agency official.

(ii) Prepare and/or obtain contract modifications needed to implement negotiated cost impact settlements, as requested by the cognizant Federal agency official.

(iii) When the cognizant Federal agency official has properly determined a cost impact settlement on behalf of the Government, make every effort to provide funds required for increased contract price modifications to affected Contracting Officers for obligation so that the cognizant Federal agency official can concurrently execute all the requested contract modification(s) needed to settle the cost impact action in a timely manner.

Subpart 9903.3—CAS Rules and Regulations

5. Section 9903.301 is amended by adding two definitions to read as follows:

9903.301 Definitions.

(a) * * *

* * * * *

Function, as used in this part, means an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished. Examples of functions include activities such as accounting, marketing, research, product support, drafting, assembly, inspection, field services.

* * * * *

Intermediate cost objective means a cost objective that is not a final cost objective. Intermediate cost objectives are used to accumulate the costs of specific functions or groups of functions that are generally included in specific indirect cost pools and then allocated as pooled cost to other intermediate and/or to final cost objectives. Intermediate cost objectives may also be used to accumulate direct costs that are included in a cost pool and allocated to final cost objectives as a direct charge.

* * * * *

6. Section 9903.302–1 is amended by revising paragraph (c) to read as follows:

9903.302 Definitions, explanations, and illustrations of the terms, ''cost accounting practice'' and ''change to a cost accounting practice.''

9903.302–1 Cost accounting practice.

* * * * *

(c) *Allocation of cost to cost objectives* as used in this part, refers to the cost accounting methods or techniques used to systematically accumulate and distribute costs to intermediate and final cost objectives. The allocation of cost to cost objectives includes both the direct and indirect allocation of costs.

(1) Examples of cost accounting practices involving the allocation of cost to cost objectives are the determinations made on:

(i) How a cost is to be accumulated in the contractor's cost accounting system,

(ii) Whether a cost is to be directly or indirectly allocated to final cost objectives,

(iii) The selection and composition of cost pools, and

(iv) The selection and composition of the appropriate allocation bases.

(2) The selection of cost pools involves the determination to establish one or more homogeneous cost pools for the accumulation of specific costs to be allocated to other intermediate and/or to specific final cost objectives at specified locations. Normally, separate pools are established for specific functional activities, e.g., for a specified assembly operation within a particular segment. The composition of cost pools involves the determinations to identify and accumulate, by specific elements of cost, the costs of the specific functions or groups of functions to be included within each established cost pool.

(3) The selection of an allocation base involves the determination on what type of activity (e.g., labor hours, square footage) or cost data (e.g., labor dollars, total cost input) will be used as the basis for the allocation of the total costs accumulated in each pool to intermediate and/or final cost objectives at specified locations. Normally, the allocation base activity selected for each pool is the activity that best represents the causal or beneficial relationship between the pooled costs and the base activity. The composition of an allocation base involves the determination to collect and accumulate the selected base activity data for a particular function, or group of functions, associated with each established pool. The composition of a business unit allocation base includes the specific cost and/or functional groupings within the base. The composition of a home office allocation base includes the grouping of segments within the applicable base. Examples of allocation bases include direct engineering labor hours for a specific direct engineering function performed at a specified location, total cost input of a particular segment, total payroll costs for specific segments reporting to the same group or home office.

* * * * *

7. Section 9903.302–2 is revised to read as follows:

9903.302–2 Change to a cost accounting practice.

(a) *Change to a cost accounting practice,* as used in this part, including the contract clauses prescribed at 9903.201–4, means any alteration in a cost accounting practice, as defined in 9903.302–1, whether or not such practices are covered by a Disclosure Statement, including the following changes in cost accumulation:

(1) *Pool combinations.* The merging of existing indirect cost pools.

(2) *Pool split-outs.* The expansion or breakdown of an existing indirect cost pool into two or more pools.

(3) *Functional transfers.* The transfer of an existing ongoing function from an existing indirect cost pool to a different pool or pools.

(b) *Exceptions.*

(1) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. This exception shall be applied at the segment or company-wide level, depending upon the nature of the cost or the function involved. At the segment level, different segments can establish different cost accounting practices for the same type of cost when the cost is incurred for the first time or a function is created by each segment. This exception does not apply to transfers of ongoing functions, e.g., from one segment to another segment or home office.

(2) The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice.

(3) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

(4) The transfer of an existing ongoing function from a segment's existing overhead or G&A indirect cost pool to a different pool is not a change in cost accounting practice *provided*:

(i) The ongoing costs are directly allocated back to the original pool for reallocation to final cost objectives, and

(ii) The segment continues to identify and accumulate the directly allocated cost of the function within the same pool in the same manner as was done before the change.

(c) *Cost accounting practice changes exempt from contract price and cost adjustment.* The following types of changes in cost accounting practice shall not be subject to contract price or cost adjustment. However, the cost accounting practices resulting from such changes must comply with all applicable Cost Accounting Standards and notification of the change in cost accounting practice must be provided as required by 9903.405–2.

(1) Changes in cost accumulation practices that result due to a transfer of functions or merger of cost pools which are undertaken for improved management efficiencies and effectiveness and which involve the physical realignment or reduction of facilities or personnel.

(2) Changes in the selection and/or composition of an overhead or general and administrative expense pool resulting from the consolidation of existing pools or the expansion of an existing pool into two or more pools that are not exempt under paragraph (c)(1) of this section but meet all of the following conditions:

(i) The elements of cost and the functions included in the original and resultant merged or split-out pools remain the same. After the change, the costs of the ongoing functions are identified and accumulated in the resultant merged pool or split-out pools in the same manner and at the same level of detail.

(ii) The selected activity used as the allocation base remains the same for the affected pools. After the change, the merged allocation base activity or split-out allocation base activity is identified and accumulated in the new merged allocation base or split-out allocation bases.

(iii) The merged or split-out pools involve the allocation of similar pooled overhead or G&A costs to similar final cost objectives where the underlying levels of pooled costs and allocation base activity involve similar proportional relationships. Pools shall be considered similar if, after the change, the resultant pools are homogeneous (see 9904.418–50(b)) and the rates (or rate) used to allocate pooled indirect costs to final cost objectives fall within a corridor of plus or minus one percent of the rate (or rates) that would have resulted if the combination or expansion had not occurred. The comparison shall be based on the same level of ongoing pooled costs and allocation base activity that is expected to occur after the change is made. For example, if under the original cost accounting practices followed for a single pool the overhead recovery rate would be 200%, then the resultant split-out rates must fall within the corridor of 198% to 202%. In the case of a combination of pools and their respective allocation bases, the corridors around the two original rates that would result if there were no combination must converge or overlap to be considered similar, e.g., if the continued use of two pools would result in rates of 101% and 99%, their respective corridors of 100% to 102% and 88% to 100% would overlap.

* * * * *

8. Section 9903.302–3 is amended by adding a new introductory paragraph, revising introductory paragraphs (a), (b) and (c), revising the illustration at (c)(3) and by adding new illustrations (c)(4), through (c)(11) to read as follows:

9903.302–3 Illustrations of changes which meet the definition of ''change to a cost accounting practice.''

The following illustrations are not intended to cover all possible changes in cost accounting practices nor are the illustrations to be used as limitations for determining if an accounting change has occurred. Further, each illustration is not intended to be all-inclusive. Accordingly, the lack of a mentioned change in cost accounting practice does not mean that there is not a change in cost accounting practice. The decision as to whether a change in cost accounting practice has or has not occurred, requires a through analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

(a) The cost accounting practice used for the measurement of cost has been changed. * * *

(b) The cost accounting practice used for the assignment of cost to cost accounting periods has been changed. * * *

(c) The cost accounting practice used for the allocation of cost to cost objectives has been changed.

Description	Accounting treatment
* * * * * * *	
(3) The contractor changes to a different allocation base.	(3)(i) Before change: The contractor used a direct manufacturing labor hours base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives. (ii) After change: The contractor uses a direct manufacturing labor dollars base to allocate costs accumulated in the manufacturing overhead pool to final cost objectives. (iii) The described change from a direct labor hours base to a direct labor dollars base represents a change in the selection of the allocation base activity.

Description	Accounting treatment
(4) A Segment combines two similar ongoing functions. (i) For internal management and financial reporting purposes, the ongoing direct and indirect assembly operations at Plants A and B are merged into a new combined plant-wide pool.	(4)(i) Before change: The Segment established separate assembly overhead pools to accumulate the indirect costs applicable to Plant A's and Plant B's respective assembly functions. Pooled costs were allocated to individual final cost objectives based on Plant A's and Plant B's respective assembly direct labor dollars allocation bases. (ii) After change: The indirect costs of the two ongoing assembly functions are combined and accumulated in one indirect assembly cost pool. Pooled costs are allocated to individual final cost objectives based on a total assembly direct labor dollars allocation base applicable to the two plant locations. (iii) A cost accounting practice change occurred because the selection and composition of the pool has changed and the composition of the allocation base has changed. (iv) Because the pools were combined, the specific indirect costs associated with Plant A and Plant B are now accumulated in one pool and are allocated to all individual final cost objectives performed at both Plants A and B.
(5) Assume the same circumstances as in (4) above except that Plant A is closed. (i) The contractor's total overall costs of operations are reduced. (ii) The change involves reductions and/or transfers of employees and the sale of various physical assets by both Segments.	(5)(i) The merging of the two indirect cost pools into one indirect cost pool and the merging of the two allocation bases resulted in a cost accounting practice change for the same reasons cited in (4) above. (ii) The change resulted in economies and efficiencies due to physical changes and reductions in personnel. The CAS-covered contracts that were affected by the change in practice are not subject to contract price and cost allowance adjustment or the cost impact process under the exemption provided by 9903.302–2(c)(1).
(6) Assume the same circumstances as in (4) above except that the two ongoing assembly functions continue to operate in the same manner before and after the change and that the two plants otherwise remain unchanged.	(6)(i) The merging of the two indirect cost pools into one indirect cost pool and the merging of the two allocation bases resulted in a cost accounting practice change for the same reasons cited in (4) above. (ii) If the merged indirect cost pools were determined to be similar under the exemption criteria provided at 9903.302–2(c)(2), then the CAS-covered contracts that were affected by the change in practice would not be subject to contract price and cost allowance adjustment or the cost impact process.
(7) Assume the same circumstances as in (4) above except that Plants A and B are separate Segments A and B that are combined as Segment C for management reporting purposes.	(7)(i) Before change: Segments A and B each established an assembly overhead pool to accumulate the indirect costs applicable to their respective assembly functions. Pooled costs were allocated to final cost objectives based on Segment A's and B's respective assembly direct labor dollars. (ii) After change: Segment C establishes a single assembly overhead pool to identify and accumulate the costs of Segment A's and Segment B's ongoing indirect assembly functions. Pooled costs are allocated to final cost objectives based on Segment C's total assembly direct labor dollars generated by the two ongoing but separate assembly operations. (iii) For the same reasons cited in (4) above, a cost accounting practice change has occurred. Because the number of pools established by the contractor has changed, the specific costs associated with Segments A and B are now allocated to all of the individual final cost objectives performed by both Segments A and B. (iv) If either one of the exemptions contained in 9903.302–2(c) applies, then the CAS-covered contracts that were affected by the change in practice would not be subject to contract price and cost allowance adjustment or the cost impact process.
(8) The contractor changes how the ongoing indirect costs of the manufacturing and assembly operations are accumulated and allocated to final cost objectives by a segment.	(8)(i) Before change: The indirect costs applicable to the manufacturing and assembly functions were accumulated in a plant-wide indirect cost pool and allocated to final cost objectives by use of a direct labor dollars base comprised of manufacturing and assembly direct labor dollars. During each cost accounting period, a single plant-wide indirect cost rate was used to allocate the accumulated indirect costs to individual final cost objectives. (ii) After change: The ongoing indirect manufacturing and assembly costs are split-out and accumulated separately in a manufacturing pool and assembly pool. The pooled costs are allocated to final cost objectives by use of a manufacturing direct labor dollars base and an assembly direct labor dollars base, respectively. Two indirect cost rates are now used to allocate the ongoing indirect costs to individual final cost objectives.

Description	Accounting treatment
	(iii) The decision to accumulate the ongoing costs of the manufacturing and assembly functions separately, in two pools instead of one, represents a change in the selection and composition of the pool. The decision to allocate the accumulated pool costs to final cost objectives by use of separate allocation bases for the manufacturing and assembly functions instead of one plant-wide allocation base represents a change in the composition of the base.
(9) The contractor transfers the incoming materials inspection function. (i) Incoming materials are inspected in the same manner before and after the change.	(9)(i) Before change: The cost of performing the incoming inspection function was accumulated in an intermediate cost objective that was included in the Segment's manufacturing overhead expense pool. Accumulated pool costs were allocated to final cost objectives based on manufacturing direct labor dollars. (ii) After change: The accumulated cost of the incoming inspection function is included in the Segment's materials handling overhead pool. These pooled costs are allocated to final cost objectives based on direct material costs. (iii) The decision to include the accumulated cost of the ongoing inspection function in a different cost pool represents a change in the composition of the two pools. The decision to allocate incoming inspection costs to final cost objectives by use of a material cost base rather than a labor dollars base represents a change in the selection of the allocation base activity for the incoming inspection function.
(10) A contractor establishes a new product line by acquiring another company. Both entities are performing CAS-covered contracts. (i) The acquired company will be treated as a new segment. The contractor's new segment will complete the CAS-covered contracts that were novated from the prior company to the contractor. It will not perform any work associated with the contractor's existing lines of business.	(10) As of the effective date of acquisition, the contractor requires the new segment to group, accumulate and distribute the continuing costs of the acquired ongoing functions differently, e.g., the acquired company's single overhead pool is split into two new pools. The cost of the ongoing functions will be grouped and accumulated in different indirect expense pools and allocated to different final cost objectives by use of two allocation bases split-out from the previously used single base. (i) The changes made by the acquiring contractor represent changes in the selection and composition of the pools and the composition of the bases for the acquired CAS contracts. Unless one of the exemptions at 9903.302–2(c) applies, the cost accounting practice changes are subject to the contract price and cost adjustment provisions of the acquired CAS-covered contracts. (ii) The initial adoption exception provided by 9903.302–2(b)(1) would not apply because this is not a first time incurrence of cost or creation of a function, with regard to the ongoing acquired CAS-covered contracts.
(11) A contractor expands the existing product line of Segment A by acquiring another company. Both entities are performing CAS-covered contracts. (i) The acquired company will be absorbed by Segment A. (ii) Segment A will complete the acquired CAS-covered contracts that were novated from the prior company to the contractor.	(11)(i) As of the effective date of acquisition, Segment A merges the continuing costs of the acquired company's ongoing functions into Segment A's indirect cost pools and allocation bases, in accordance with Segment A's established cost accounting practices. Segment A's pool and base now include the ongoing functions of both Segment A and the acquired company. (ii) The costs of the contractor's existing contracts will be accumulated and reported differently than when the contract costs were estimated. The newly established allocation bases and indirect cost pools include both the existing and acquired ongoing functions. (iii) The pool and base combinations made by the acquiring contractor represent changes in the selection and composition of the pools and bases for the existing Segment and acquired company. Unless one of the exemptions at 9903.302–2(c) applies, the cost accounting practice changes are subject to the contract price and cost adjustment provisions of the existing and acquired CAS-covered contracts. (iv) The exceptions provided by 9903.302–2(b)(1) would not apply because this is not a first time incurrence of cost or creation of a function, with regard to the existing or acquired CAS-covered contracts.

9. Section 9903.302–4 is amended by adding an introductory paragraph, and illustrations (h) through (k) to read as follows:

9903.302–4 Illustrations of changes which do not meet the definition of ''Change to a cost accounting practice.''

The following illustrations are not intended to cover all possible changes that are not changes in cost accounting practice nor are the illustrations to be used as limitations for determining that an accounting change has not occurred. The decision as to whether a change in cost accounting practice has or has not occurred, requires a thorough analysis of the circumstances of each individual situation based on the definitions and exceptions specified in 9903.302–1 and 9903.302–2.

Description	Accounting treatment
* * * *	* * *
(h)(1) The contractor consolidates the accounting functions performed directly by Segment A and Segment B. A new service center is established within Segment B to perform the accounting function for several segments.	(h)(1) (i) Before the change, Segments A and B each directly identified and accumulated the cost of their accounting functions in intermediate cost objectives that were included in their respective G&A expense pools. (ii) After the change, the costs of performing the accounting function for Segment A and the other segments are accumulated directly by Segment B in a newly established accounting service center cost pool. Segment B allocates the accumulated service center costs to the benefiting Segments based on actual usage factors. Segments A and B continue to identify and accumulate the accounting service cost charges received from Segment B in their respective Segment G&A expense pools. (iii) Since Segments A and B continued to specifically identify and accumulate the contractor's costs of performing Segment A's and B's accounting functions in their respective G&A expense pools, before and after the change, no change in the contractor's established cost accounting practices has occurred.
(h)(2) Assume the same circumstances as in (h) above, except that after the change the function is performed by a home office.	(h)(2) (i) Before the change, Segment A directly identified and accumulated the cost of its accounting functions in an intermediate cost objective that was included in its G&A expense pool. (ii) After the change, the costs of performing the accounting function for Segment A and the other segments are accumulated directly by the home office and the accumulated costs are allocated to the benefiting Segments based on actual usage factors. Segment A continues to identify and accumulate the accounting service cost charges received from the home office in the Segment's G&A expense pool. (iii) Since Segment A continued to specifically identify and accumulate the contractor's costs of performing Segment A's accounting functions in the G&A expense pool, before and after the change, no change in the contractor's established cost accounting practices has occurred. (iv) A change in cost accounting practice would occur if Segment A no longer accumulated the costs of its ongoing accounting functions in the same intermediate cost objective, in the G&A pool, e.g., if Segment A were unable to do so because the contractor accumulated the costs of the accounting functions with other costs at the home office and allocated the combined costs to Segments on a common usage base or as residual expense.
(i) The contractor transfers an inspection department employee from Plant A to Plant B.	(i)(1) Before the transfer, the employee's salary was identified and accumulated as inspection labor in Plant A's overhead pool. (2) After the transfer, the employee's salary is similarly identified and accumulated in Plant B's overhead pool. The salaries of all other employees performing the inspection function at Plants A and B continue to be identified and accumulated in their respective pools. (3) Since the cost of the inspection functions at Plants A and B continue to be identified and accumulated within the same pools, before and after the change, no change in cost accounting practice has occurred.
(j) A contractor with a corporate home office creates a new segment for the purpose of entering a new line of business. The new segment will not perform any work associated with the contractor's existing CAS-covered contracts.	(j)(1) After change: The costs of the contractor's home office continue to be accumulated and allocated to segments in the same manner. The new segment is added to the home office allocation base or bases used to allocate home office costs to all segments. (2) The addition of the new segment to the base represents an initial adoption of a cost accounting practice for the segment when it was created (see exception at 9903.302–2(b)(1)). Since the selection and composition of the pool and applicable allocation bases were not otherwise changed, the described home office change is not a cost accounting practice change requiring contract price or cost adjustments.
(k) Assume the same circumstances as in (j) above, except that: (1) The contractor acquired a new segment that is performing CAS-covered contracts from another company. (2) The acquired segment will continue to estimate, accumulate and report costs in accordance with the original company's compliant and previously disclosed cost accounting practices for that segment. A new Disclosure Statement is filed to that effect. Also disclosed is the contractor's home office cost allocation to the segment.	(k)(1) For the reasons stated in (j) above, the described home office change is not a cost accounting practice change. (2) At the segment level, the first time incurrence of the acquiring contractor's home office cost allocation is an initial adoption of a cost accounting practice (see exception at 9903.302(b)(1)). Since the contractor adopted the acquired segment's previously established cost accounting practices, no change in established cost accounting practices occurred for the acquired CAS-covered contracts.

10. Section 9903.302–5 is added to read as follows:

9903.302–5 Mergers and Acquisitions.

(a) Each CAS-covered contract requires that the performing contractor consistently follow its established and disclosed cost accounting practices over the contract's entire period of performance.

(b) When a contractor or a segment performing a CAS-covered contract is acquired by a different contractor through a merger or acquisition, the acquired contractor or segment shall accumulate and report costs incurred from the effective date of acquisition or merger through completion of the acquired contract consistently in accordance with the cost accounting practices established by the acquired contractor or segment. Changes made to such established and/or disclosed cost accounting practices after the effective date of the merger or acquisition by the acquiring contractor shall be processed as changes in cost accounting practice in accordance with the requirements of Part 9903.

(c) This subsection applies equally to CAS-covered subcontracts acquired by a contractor or subcontractor.

9903.306 [Removed and Reserved]

11. Section 9903.306 is amended by removing and reserving the section.

12. A new Subpart 9903.4 is proposed to be added to read as follows:

Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances

9903.401 Applicability of Subpart.
9903.401–1 CAS-covered contracts and subcontracts.
9903.401–2 Educational Institutions.
9903.402 Purpose.
9903.402–1 Changes in Cost Accounting Practice.
9903.402–2 Failure to comply (Noncompliances) with an applicable
9903.403 Definitions.
9903.404 Materiality determination for making adjustment.
9903.405 Change in Cost Accounting Practice.
9903.405–1 General.
9903.405–2 Notification of Changes in Cost Accounting Practices.
9903.405–3 Determination of Adequacy and Compliance and Request for General Dollar Magnitude (GDM).
9903.405–4 Contractor Cost Impact Submissions.
9903.406 Noncompliances.
9903.406–1 General Types of Noncompliances.
9903.406–2 Determination of Noncompliance.
9903.406–3 Cost Estimating Noncompliance.
9903.406–4 Cost Accumulation Noncompliance.
9903.406–5 Technical noncompliances.
9903.407 Illustrations.
9903.407–1 Change in Cost Accounting Practice—Illustrations.
9903.407–2 Compliance illustrations.

Subpart 9903.4—Contractor Cost Accounting Practice Changes and Noncompliances

9903.401 Applicability of Subpart.

9903.401–1 CAS-covered contracts and subcontracts.

(a) Subpart 9903.4 rules and regulations are to be applied uniformly to all CAS-covered contracts and subcontracts affected by a compliant change in cost accounting practices and/or a noncompliant cost accounting practice. By accepting the first CAS-covered contract or subcontract that incorporates part 9903, which includes this subpart 9903.4, the contractor agrees to process noncompliance actions and changes occurring after the award of that contract or subcontract in accordance with this subpart for all existing CAS-covered contracts and subcontracts affected by the change or noncompliance.

(b) To aid in meeting the requirements set forth in (a) for processing noncompliance actions and changes in cost accounting practices, the contractor shall maintain a system for identifying all existing CAS-covered contracts and subcontracts, and their periods of performance.

9903.401–2 Educational Institutions.

(a) Subpart 9903.4 rules and regulations apply to all CAS-covered contracts and subcontracts awarded to educational institutions. Such CAS-covered contracts and subcontracts incorporate part 9903 by reference and contain specific terms and conditions that require contract price or cost adjustments for material cost impacts attributable to compliant changes in cost accounting practices and/or to noncompliant practices. Subpart 9903.4 establishes procedures for determining the required adjustments. Other Federally sponsored agreements that do not contain a CAS contract clause are subject to similar requirements under OMB Circular A–21, Cost Principles for Educational Institutions, which incorporated the Board's Disclosure Statement (Form CASB DS–2) and the CAS in part 9905. OMB Circular A–21 also requires adjustments for sponsored agreements affected by material cost impacts due to changes in compliant cost accounting practices or due to the application of a noncompliant practice used to estimate, accumulate or report the costs of sponsored agreements.

(b) The CASB and OMB requirements were designed to be compatible and are to be administered by the cognizant Federal agency official in a uniform and cost effective manner. To the maximum extent feasible, the cognizant Federal agency official should apply a single set of procedures when obtaining cost impact data and when determining the adjustments that may be required for individual CAS-covered contracts and other Federally sponsored agreements affected by the same change or noncompliance. The procedures applied to all Federally sponsored agreements, including CAS-covered contacts and subcontracts, should be consistent with subpart 9903.4 requirements and objectives.

(c) *Waiver authority for compliant changes.* When an educational institution changes a compliant cost accounting practice that affects CAS-covered contracts and other Federally sponsored agreements, the cognizant Federal agency official may waive or modify, on a case-by-case basis, applicable section 9903.405 requirements for affected CAS-covered contracts and subcontracts if deemed necessary in order to establish appropriate alternative procedures or methods for obtaining cost impact data or determining contract price or cost adjustments in a uniform manner for all Federally sponsored agreements. The basis for the waiver and the alternate procedures utilized shall be documented in a written determination. This waiver authority does not apply to the notification requirements in 9903.405–2 or the adequacy and compliance determinations required by 9903.405–3.

9903.402 Purpose.

9903.402–1 Changes in Cost Accounting Practice.

The contract clauses prescribed in 9903.201–4, Contract clauses, set forth the requirements for changes in cost accounting practices that a contractor may be required to make in order to comply with a standard, modification or interpretation thereof that becomes applicable to existing covered contracts for the first time due to the subsequent award of a covered contract or may otherwise decide to make, e.g., a change from an established or disclosed compliant cost accounting practice to another compliant cost accounting practice. Section 9903.405 establishes the specific actions to be taken by the contracting parties, pursuant to such changes. Section 9903.405 also establishes procedures for adjustments of contract amounts that are materially

affected by changes in cost accounting practices, while not requiring adjustment of all contracts that are affected by such changes.

9903.402–2 Failure to comply (Noncompliances) with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently.

The contract clauses prescribed in 9903.201–4, Contract clauses, require the contractor or subcontractor to agree to an adjustment of the contract price or cost if the contractor or subcontractor fails to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, and such failure results or will result in any increased cost paid, in the aggregate, by the United States, under CAS-covered contracts and subcontracts. Section 9903.406 establishes the actions to be taken by the contracting parties in order to correct the noncompliant practices and/or effect recovery of any increased costs paid as a result of the noncompliance.

9903.403 Definitions.

This section 9903.403 defines terms as used in this part 9903, including the contract clauses prescribed at 9903.201–4.

Applicability date means (a) for required cost accounting practice changes, the date on which a contractor is first required to accumulate and report costs in accordance with an applicable Standard, modification or interpretation thereto; and (b) for voluntary cost accounting practice changes, the date on which a contractor begins to use a new cost accounting practice for cost accumulation and reporting purposes.

Contracts subject to adjustment means CAS-covered contracts and subcontracts, including definitized contract options, that have contract performance beyond the applicability date of a change in cost accounting practice, and have their current contract prices based on a previous cost accounting practice.

Cost impact means the increase or decrease in estimated or actual costs allocable to a CAS-covered contract or subcontract due to a compliant change in cost accounting practices, a noncompliance with a cost accounting standard, or a failure to follow cost accounting practices consistently.

Desirable change means a voluntary change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official finds is desirable and not detrimental to the Government.

Detailed cost impact proposal means a proposal that shows the cost impact of a change in cost accounting practice for contracts subject to adjustment that have an estimate-to-complete which exceeds a threshold amount specified by the cognizant Federal agency official.

Effective date means:

(1) for compliance with Standards, modifications and interpretations thereto, the date on which a contractor is first required to estimate proposed contract costs in accordance with an applicable standard, modification or interpretation, as specified by the CAS Board; and

(2) for voluntary cost accounting practice changes, the date on which a contractor begins using a new cost accounting practice for cost estimating purposes.

General dollar magnitude estimate means an estimate of the aggregate cost impact, by contract type, of a change in cost accounting practice, on contracts subject to adjustment.

Increased costs due to a change in compliant cost accounting practices means:

(1) For flexibly priced CAS-covered contracts, when a greater amount of cost will be allocated to the contract than would have been allocated to it had the contractor not changed its cost accounting practices; and

(2) For firm fixed-price CAS-covered contracts, when the costs to be allocated to the contract are less than the amount of costs that would have been allocated had the contractor not changed its cost accounting practice(s).

Increased costs due to a cost accumulation noncompliance means increased costs resulting from a contractor's failure to comply with applicable Cost Accounting Standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when accumulating costs under CAS-covered contracts, and such failure results in a higher amount of costs allocated to a flexibly-priced CAS-covered contract than would have been allocated to the contract had the contractor complied with applicable Standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

Increased costs due to a cost estimating noncompliance means increased costs resulting from a contractor's failure to comply with applicable standards, modifications or interpretations thereto, or to follow its disclosed or established cost accounting practices consistently when estimating proposal costs for a contemplated contract (or subcontracts), and such failure results in a higher contract price than would have been negotiated had the contractor complied with applicable standards, modifications or interpretations thereto, or followed its cost accounting practices consistently.

Increased costs paid means the amount the Government actually pays, in the aggregate, for increased costs resulting from compliant cost accounting practice changes or noncompliant cost accounting practices used to estimate or accumulate costs.

Netting process means the technique used to determine if action needs to be taken to preclude the payment of increased costs for voluntary accounting changes not deemed desirable, by comparing the net higher allocation of costs by contract type to the net lower allocation of costs to other contract types for contracts subject to adjustment.

Notification date means the date on which the contractor formally notifies the cognizant Federal agency official of a planned change in cost accounting practices.

Offset process means the combining of cost increases to one or more affected contracts of a given type with cost decreases to one or more affected contracts of the same type, for the purpose of mitigating action that needs to be taken due to changes in cost accounting practices.

Required change means a change in cost accounting practice that a CAS-covered contractor is required to make in order to comply with applicable standards, modifications or interpretations thereto, that subsequently become applicable to an existing contract due to the receipt of another CAS-covered contract or subcontract.

Technical noncompliance means a noncompliant cost accounting practice that does not produce material increased costs paid by the Government.

Voluntary change means a change in cost accounting practice from one compliant practice to another that a contractor with CAS-covered contracts elects to make.

9903.404 Materiality determination for making adjustment.

Contract price adjustments or actions to preclude or recover the payment of increased costs resulting from changes in cost accounting practice, or failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or to follow any cost accounting practice consistently, shall only be required if the amounts are material. In determining materiality, the cognizant Federal agency official shall

use the criteria specified in 9903.305. A cognizant Federal agency official's determination of materiality will require judgment based on individual circumstances and discussions between the contracting parties. Such judgments, discussions and decisions should take place as soon as practicable after receipt of contractor notification of a change, or final determination of noncompliance, so as to lead to a timely resolution of the cost impact action. The cognizant Federal agency official may forego submission of a general dollar magnitude estimate or a cost impact proposal, or to adjust contracts, if the cognizant Federal agency official determines that the amount involved is immaterial based on other available data.

9903.405 Changes in Cost Accounting Practice.

9903.405–1 General.

A CAS-covered contractor shall make changes to its established or disclosed cost accounting practices when required in order to comply with applicable Cost Accounting Standards, including any modification and interpretations promulgated thereto. A contractor may change its established cost accounting practices voluntarily, provided the cognizant Federal agency official is notified of the change and the new practice complies with applicable Cost Accounting Standards. CAS-covered contracts and subcontracts affected by changes in cost accounting practices that are either required to comply with Cost Accounting Standards, modifications or interpretations thereto, or are made voluntarily for which the cognizant Federal agency official has made a finding that the change is desirable in accordance with 9903.201–6 are subject to equitable contract price adjustments. For all other voluntary accounting changes, disclosed in accordance with 9903.405–2, the cognizant Federal agency official shall take action to preclude the payment of increased costs by the United States as a result of the change, as prescribed in 9903.405–5(d). With the exception of such action to preclude the payment of increased costs for voluntary changes, the administrative procedures for handling potential contract price or cost adjustments will be consistent for all accounting changes, as set forth in the remaining paragraphs of 9903.405. Any changes in cost accounting practices that are implemented without the required notification as set forth in 9903.405–2 will be considered a failure to follow a cost accounting practice consistently, and shall be processed as a noncompliance condition in accordance with 9903.406.

9903.405–2 Notification of Changes in Cost Accounting Practices.

(a) The contractor shall submit to the cognizant Federal agency official a description of any planned change in cost accounting practices. The date of submission is hereafter referred to as the notification date.

(b) The contractor shall notify the cognizant Federal agency official in accordance with the following:

(1) Required changes shall be determined and disclosed as soon as practicable, but no later than 60 days before the price proposal in which the contractor first uses the required change to estimate costs for a potential CAS-covered contract, or other date to which both parties mutually agree.

(2) Voluntary and desirable changes shall be disclosed as soon as the contractor decides to change an established or disclosed cost accounting practice. Notification shall be provided no later than the earlier of the applicability date or 60 days before the effective date. The effective date on which the contractor shall begin using the new practice for cost estimating and negotiating purposes is the earlier of:

(i) 60 days after notification of the change in accounting practice; or

(ii) The date of determination by the cognizant Federal agency official that the revised accounting practice is adequate and compliant (or other date to which both parties mutually agree).

(c) Contractors are encouraged to make early notification of changes in cost accounting practices in order to increase the time between the effective date and applicability date. This will decrease the number of contracts existing on the applicability date that were awarded based on the old cost accounting practice. Early use of the new practice in estimating proposal costs should lessen the number of contracts and subcontracts subject to adjustment as a result of the change, the total dollar impact of the accounting change for existing contracts, and the likelihood that a detailed cost impact proposal will be required.

(d) For voluntary and desirable changes, the notification date generally should occur more than 60 days prior to the applicability date. If a contractor desires to make the applicability date of the change retroactive to the beginning of the current fiscal year in which the notification is made, the contractor must submit rationale for such action and obtain the cognizant Federal agency official's approval. The rationale must state the reasons for making a retroactive change. Regardless of whether notification occurs before or after the applicability date, the contractor should not implement any retroactive changes until at least 60 days after giving notification to the cognizant Federal agency official.

(e) For desirable changes, the contractor, when requesting that a voluntary change be deemed desirable, shall provide rationale demonstrating that the accounting change is desirable and not detrimental to the Government's interests (see 9903.201–6). The cognizant Federal agency official should make a decision with regard to this finding promptly after the change is determined to be adequate and compliant.

(f) The contractor shall not implement a new cost accounting practice to estimate or accumulate costs prior to the cognizant Federal agency's official's determination of adequacy and compliance or 60 days after the notification date, whichever comes first. For voluntary changes, any contracts awarded between the notification and effective dates of the new practice that were based on the old practice will be subject to an equitable adjustment based on the effect of the application of the new accounting practice.

(g) *Data submission requirements:* The description of any change in cost accounting practice will include the relevant Disclosure Statement pages affected by the change, any additional information which will help the cognizant Federal agency official make a determination of adequacy and compliance, and if applicable, data demonstrating that the change is:

(1) Exempt from contract price and cost adjustment pursuant to 9903.302–2(c) (1) or (2),

(2) Obviously immaterial because the change in practice will not result in a greater or lesser allocation of cost to individual CAS-covered contracts affected by the change, i.e., after the change, the amounts of cost allocated to individual covered contracts will approximate the amounts that would have been allocated if the change were not made,

(3) Desirable and not detrimental to the interests of the Government, and/or

(4) One that warrants retroactive implementation.

9903.405–3 Determination of Adequacy and Compliance and Request for General Dollar Magnitude (GDM).

(a) Upon receipt of the contractor's notification, the cognizant Federal agency official, with the assistance of the auditor, shall review the planned cost accounting practice change

concurrently for adequacy and compliance. If the cognizant Federal agency official identifies any area of inadequacy, a revised description of the new accounting practice shall be requested. Problems of adequacy should be resolved between the parties as soon as possible after the initial notification of the accounting change. The notification date will then be revised to the date of receipt of a revised description of a planned change that is subsequently deemed adequate and compliant. If the cognizant Federal agency official determines that the disclosed practice is noncompliant with any Cost Accounting Standards, modifications or interpretations thereto, and the contractor implements the practice, the accounting change will be handled as a noncompliance under the provisions of 9903.406. Once the cognizant Federal agency official has determined that the accounting change is both adequate and compliant, the cognizant Federal agency official shall immediately notify the contractor. This generally should occur within 60 days of the contractor's notification of the change in accounting practice.

(b) After a determination of adequacy and compliance has been made, the cognizant Federal agency official will request a GDM estimate of the cost impact of the change and a cost impact settlement proposal, as described in 9904.405–4 (a) and (b), unless a determination is made that the practice change is exempt under 9903.302–2(c) or the impact of the change on CAS-covered contracts and subcontracts is obviously immaterial based on information provided by the contractor in the notification of the change. The request should specify a date for submission of the GDM and cost impact settlement proposal, generally 30 to 60 days after the cognizant Federal agency official's request, depending on the complexity of the changes. The cognizant Federal agency official will use the GDM and cost impact settlement proposal to determine if a detailed cost impact proposal is required, and if individual contract price and cost adjustments are necessary to achieve equity.

9903.405–4 Contractor Cost Impact Submissions.

(a) General Dollar Magnitude (GDM).

(1) The purpose of the GDM estimate is to provide information to the cognizant Federal agency official on the overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous accounting practice. The GDM is used together with the cost impact settlement proposal to determine if the change in cost accounting practice has resulted in material increased or decreased costs to existing contracts, and to attempt to resolve the cost impact of the change in cost accounting practice without requiring a detailed cost impact settlement proposal as described in 9903.405–4(c).

(2) The GDM shall show a reasonable estimate of the aggregate impact of the change on CAS-covered contracts and subcontracts subject to adjustment, by contract type, from the applicability date of the change to completion of the contracts subject to adjustment.

(3) In computing the GDM, the contractor shall use a consistent data baseline for the before and after change amounts. In most cases, the after change cost baseline should be used because this is the same cost baseline that will be used to determine the revised forward pricing rates and current contract estimates-to-complete based on the new accounting practice.

(4) Any format which reasonably shows the aggregate impact by contract type is acceptable. One acceptable GDM format is illustrated below.

SUMMARY.—GENERAL DOLLAR MAGNITUDE ESTIMATE OF TOTAL COST IMPACT ON ALL COVERED CONTRACTS AWARDED PRIOR TO APPLICABILITY DATE

[Required changes, voluntary changes, desirable changes]

	Estimate to complete (1)		Difference cost impact (A – B)	Proposed adjustment amounts (4)
	Old practice (2) (A)	New practice (3) (B)		
Contract types:				
CPFF				
CPIF				
FPI				
FFP				
T&M				
Totals				

Instructions:

1. The estimates to complete must be based on the same contract scope of effort, to be performed from the applicability date of the change until contract completion.
2. Enter total estimated cost to complete all of the CAS-covered contract backlog based on existing cost accounting practice. This estimate should be based on the CAS-covered contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed.
3. Enter total estimated cost to complete the CAS-covered contract backlog based on new cost accounting practice. This estimate should also be based on the backlog contracts' allocable share of the total direct and indirect costs forecasted for all cost accounting periods during which the backlog of CAS-covered contracts estimated under the old practice will be performed. However, that forecasted data must first be recast to reflect application of the new cost accounting practice, e.g., determine the effect on indirect cost pools and allocation bases, recalculate rate(s) and apply the new rate(s) to the recast base costs, as appropriate.
4. Enter total amounts from cost impact settlement proposal.

(5) The illustrated GDM format is an example of one GDM method and does not preclude the use of any other format or method that displays a reasonable estimate of the cost impact by contract type. The GDM shall be adequately supported, and generally should be based on the latest forecasted direct and indirect cost data used for forward

pricing purposes unless other data is considered preferable and agreed to by both the contractor and the cognizant Federal agency official. If a GDM is not adequately supported, or cannot be adequately supported by the contractor, the cognizant Federal agency official shall request a detailed cost impact proposal in accordance with 9903.405–4(c).

(b) Cost Impact Settlement Proposal.

(1) The purpose of the cost impact settlement proposal is to provide a sufficient number of individual contract and/or subcontract cost impact estimates to: support the accuracy of the GDM; assist the cognizant Federal agency official in determining whether any individual contract or subcontract price adjustments will be required; and allow for the settlement of the cost impact of a change in cost accounting practice without requiring a detailed cost impact proposal. The cost impact settlement proposal will be furnished simultaneously with the GDM.

(2) One acceptable format for the submission of a cost impact settlement proposal is illustrated below.

COST IMPACT SETTLEMENT PROPOSAL

[Summary of specific contract price or cost allowance adjustments]

	Estimate to complete (1)		Difference cost impact (a – b)	Proposed adjustment amounts (2)
	Old practice (a)	New practice (b)		
Contracts: (3)				
CPFF				
1.				
2.				
"All other"				
Total				(4)
CPIF				
3.				
4.				
"All other"				
Total				(4)
FFP				
5.				
6.				
"All other"				
Total				(4)

Instructions:
1. List each contract for which an individual cost impact statement has been prepared and enter the indicated data.
2. If a voluntary change that is not determined "desirable" and there are increased costs, in the aggregate, attach an explanation detailing the proposed action(s) that will be taken to preclude the payment of any net increased costs.
3. Enter contracts needed to resolve "material" amounts identified in GDM.
4. Enter proposed settlement totals on the GDM, for each contract category.

(3) The illustrated cost impact settlement proposal format is an example and does not preclude the use of any other format or method that achieves the purpose of supporting the accuracy of the GDM and determining whether the impact on any individual contracts are significant enough to require price adjustments. The individual contracts selected by the contractor for inclusion in the cost impact settlement proposal shall be those contracts with the largest dollar impact. The cognizant Federal agency official should attempt to use the GDM and cost impact settlement proposal to resolve the cost impact process to the maximum extent possible. If additional individual contract data is needed to resolve the cost impact, the cognizant Federal agency official should specify the criteria for the additional data, e.g. contracts with a dollar impact exceeding a specific dollar amount. The contractor will then resubmit the cost impact settlement proposal based on the specified criteria. The revised proposal should be submitted within 30 days of the request for additional data.

(4) If the impact is immaterial in both the aggregate by contract type as shown in the GDM, and for the individual contracts included in the cost impact settlement proposal, the cost impact process may be concluded without any adjustments. If the cognizant Federal agency official determines that the cost impact either in the aggregate by contract type or on individual contracts is material, the procedures in 9903.405–5, Negotiation and Resolution of the Cost Impact, should be followed. The requirement for adjustments should be based on separate materiality thresholds for: individual contracts; the "all other contracts" amounts; and the aggregate by contract type. The materiality thresholds, as used here, are the amounts below which no adjustments are required. The "all other contract" amount is the difference between the aggregate amount by contract type and the net sum total of the impact of the submitted individual contracts by contract type. If the cognizant Federal agency official cannot resolve the cost impact based on the data submitted in the GDM and the cost impact settlement proposal, the cognizant Federal agency official should request a detailed cost impact proposal in accordance with 9903.405–4(c). The determination by the cognizant Federal agency official of the need for a detailed cost impact proposal is final and binding, and not subject to the Disputes clause of the contract. Such determination should be made promptly after the submission of the cost impact

settlement proposal, including any revisions thereto.

(c) Detailed Cost Impact Proposal.

(1) A detailed cost impact proposal is required when the GDM cannot be adequately supported or the cost impact settlement proposal does not contain sufficient data to resolve a cost impact due to a change in cost accounting practices. It will be used by the cognizant Federal agency official in lieu of the cost impact settlement proposal to determine the magnitude of the impact of the change on existing CAS-covered contracts and subcontracts subject to adjustment and to determine which, if any, should be adjusted for the impact of the change.

(2) The detailed cost impact proposal need not include every contract and subcontract subject to adjustment as a result of the change in cost accounting practices. It typically will include all contracts and subcontracts having an estimate-to-complete, based on the old accounting practice, exceeding a specified amount established by the cognizant Federal agency official. The specified individual contract impact amount should be high enough so that the detailed cost impact proposal does not contain an excessive number of contracts and subcontracts. However, it should contain a sufficient number so that it includes a reasonably high percentage of both the backlog of these contracts and the aggregate impact amount by contract type. The established individual contract estimate-to-complete amount should be specified in a formal written request by the cognizant Federal agency official for the data. The request should also specify that the proposal include a summary and be grouped by contract type.

(3) The detailed cost impact proposal shall be submitted within a specified time period, generally 60 days after receipt of the cognizant Federal agency official's request, depending on the complexity of the changes(s) and the number of contracts involved.

(4) After analysis of the cost impact proposal, with the assistance of the auditor, the cognizant Federal agency official shall promptly negotiate and resolve the cost impact.

9903.405–5 Negotiation and Resolution of the Cost Impact.

(a) *General* (1) The cognizant Federal agency official shall negotiate any required contract price or cost adjustments due to changes in cost accounting practices or noncompliances on behalf of all Government agencies. Negotiation of price and cost adjustments may be based on a cost impact settlement proposal or a detailed cost impact proposal and should be concluded within a reasonable period of time after final submission of the proposal by the contractor.

(2) The Cost Accounting Standards Board's rules, regulations and Standards do not in any way restrict the capacity of the contracting parties to select the method by which the cost impact attributable to a change in cost accounting practice is resolved. A cost impact may be resolved by modifying a single contract, several but not all contracts, or all contracts subject to adjustment, or any other suitable technique which resolves the cost impact in a way that approximates the aggregate impact shown on the GDM.

(b) *Offset Process* The offset process of combining cost increases with cost decreases may be used to reduce the number of individual contract price or cost adjustments required as a result of a change in cost accounting practice. In applying this process, the following rules of offset apply:

(1) Use of the offset process shall not result in cost to the Government which is materially different from that which would result if individual contract prices had actually been adjusted to reflect the aggregate impact shown on the GDM.

(2) The offset process shall only be applied to contracts that are of the same contract type, e.g., CPFF, CPIF, FPI or FFP.

(3) The offset process shall not be used to materially reduce the amount of the price adjustment to any one contract that exceeds the individual contract cost impact materiality threshold established for individual contract price adjustments. It also shall not be used to reduce the adjustment for these contracts to an amount below the established threshold. The offset process may be used to determine the action required for contract adjustment purposes for the ''all other contract'' category.

(4) Within a segment, the effect of several changes may be combined in the offset consideration if the changes all take place at the same time. Such offsets may be used:

(i) within the same contract to determine if the aggregate impact on individual contracts exceed the materiality threshold;

(ii) on an overall basis to determine the aggregate ''all other contract'' amounts by contract type for all changes; and

(iii) if any action is required to preclude increased costs for concurrent voluntary changes.

(5) Offsets affecting incentive contracts may be applied, provided that the incentive provisions of these contracts are retained or not materially altered.

(6) To minimize action required to resolve cost impacts, cost increases at one segment of a company may be offset by decreases at another segment within the same contract types if the change causes costs to flow between segments either directly or via a higher organizational level such as a home office, or is made simultaneously at the direction of a higher organizational level such as a home office. For such changes, the cost impact settlement proposal should generally be submitted at the home office level so that the cognizant Federal agency official may determine the appropriate course of action.

(c) *Contract Price and Cost adjustments.*

(1) Once the cost impact settlement proposal or detailed cost impact proposal has been analyzed, the cognizant Federal agency official shall determine, with the auditor's assistance, whether contract price or cost adjustments are warranted.

(2) If the accounting change produces a material cost increase or decrease in the aggregate by contract type, it may be necessary to adjust the prices of one or more contracts of each contract type affected by the change. The required adjustments to contract prices (including fixed-price contracts) may increase or decrease contract prices depending on whether estimated contract costs increase or decrease. For voluntary changes, the sum of the adjustments of all contract prices shall not result in net increased costs paid by the Government or net upward adjustments to contracts. Even if a change produces a zero aggregate impact on the costs of all affected contracts, it still may be necessary to adjust the prices of one or more contracts of each contract type. Such adjustments may be necessary to:

(i) maintain consistency between contract funding and costs to be allocated to the contract using the new practice;

(ii) preclude increased cost payments under affected flexibly priced contracts;

(iii) preclude an enlargement of profit on affected firm-fixed price contracts beyond the level negotiated; or

(iv) avoid distortions of incentive provisions and relationships between target costs, ceiling costs and actual costs on incentive type contracts.

(3) Whether the cognizant Federal agency official decides to resolve the cost impact by adjusting the price of one or more contracts of each contract type,

or selects some other method for settlement as allowed under 9903.405–5(a)(2), the negotiated net adjustment for each contract type should approximate the aggregate impact shown on the GDM.

(4) To aid in the determination as to whether contract price or cost adjustments are required, the cognizant Federal agency official should establish materiality thresholds based on the circumstances of each change. Thresholds for individual contract price adjustments may be based on cost impact dollar values, percentage of contract price, or a combination of the two criteria, e.g. contracts with cost impacts exceeding a certain dollar amount provided that the impact exceeds a certain percentage of the contract price, or any other appropriate materiality basis. Individual contract thresholds should be set high enough so that only contracts with significant cost impacts will be adjusted. If a contractor's cost impact settlement proposal includes all contracts that have cost impacts that are reasonably close to the established individual contract materiality threshold, it should be used as a basis to resolve the cost impact.

(5) For accounting changes involving shifts of costs between contracts, generally no adjustments will be required if no individual contract's cost impact exceeds the individual contract cost impact threshold established, since the aggregate amount will, in most cases, be smaller than the highest impact on any one individual contract. The cognizant Federal agency official, with the assistance of the auditor, should evaluate the aggregate amount by contract type, as well as the ''all other contracts'' amount, to determine if these amounts exceed the aggregate or ''all other contracts'' materiality thresholds established. If these amounts exceed the threshold, adjustments may be made by either adjusting contract prices or use of an alternate technique which accomplishes the same approximate result as if all individual contracts were adjusted. If these amounts do not exceed the established aggregate or ''all other contracts'' threshold, no adjustments are required other than for individual contracts exceeding the established individual contract cost impact threshold, unless considered necessary to achieve equity.

(6) Whenever contract price adjustments are anticipated, the cognizant Federal agency official should coordinate the Government cost impact resolution plan with affected Procurement Contracting Officers, Contracting Officers or other authorized officials performing in that capacity within each affected Federal agency.

(7) At the discretion of the cognizant Federal agency official, contract fee or profit may be adjusted when resolving the cost impact through contract price adjustments. Whether fee or profit is or is not considered, in addition to the cost impact, in making contract price adjustments is a matter to be determined by the cognizant Federal agency official based on the circumstances surrounding the particular change in accounting practices.

(d) Action to Preclude Increased Cost Paid for Voluntary Changes.

(1) In the absence of a finding pursuant to 9903.201–6 that a voluntary change is desirable, no agreement may be made with regard to a voluntary change in cost accounting practice that will result in the payment of increased costs by the United States. For these voluntary changes, the cognizant Federal agency official shall, in addition to the procedures specified in 9903.405–2 through 9903.405–5(c), which apply to all accounting changes, take action to ensure that increased costs are not paid as a result of a change.

(2) The netting process (see 9903.403) is used to determine if a potential increased cost condition exists as a result of a voluntary change. To decide if action is required to preclude the payment of such increased costs, the cognizant Federal agency official shall determine, with the assistance of the auditor, to what extent the United States would pay a higher level of costs once all potential contract price adjustments are considered. This occurs when the estimated aggregate higher allocation of costs to contracts subject to adjustment exceeds the estimated aggregate lower allocation of costs to other contracts subject to adjustment.

(3) The cognizant Federal agency official may preclude increased costs on voluntary changes by limiting any upward contract price adjustments to affected contracts to the amount of any downward contract price adjustments to other affected contracts, i.e., no net upward contract price adjustments. Increased costs may also be precluded by disallowing the estimated amount of increased costs to be allocated to affected flexibly-priced contracts that exceeds the estimated reduction of costs to be allocated to affected firm fixed-price contracts. The following illustrates actions required when netting contracts in a voluntary change—no increased cost situation.

Cost shift by contract type		Actions to be taken to preclude increased costs
Flexibly priced	Firm fixed-price	
Higher	Higher	No upward price adjustments. Disallow the higher level of costs on flexibly-priced.
Lower	Higher	Limit FFP upward price adjustments to amount of flexibly-priced downward price adjustments.
Lower	Lower	Adjust FFP and flexibly-priced contract prices down by the amount of the net downward price adjustment.
Higher	Lower	Limit upward adjustments on flexibly-priced to amount of downward adjustments on FFP. Disallow any excess increased costs on flexibly-priced.

(4) For individual CAS-covered firm fixed-price contracts, increased costs are precluded by adjusting the contract price downward by the amount of the estimated lower allocation of costs to the contracts as a result of a voluntary change in cost accounting practice.

(5) As stated in 9903.404, action to preclude or recover increased costs due to changes in cost accounting practices are required only if the amounts are material. If materiality dictates that action needs to be taken to preclude increased costs paid, in the aggregate, adjustments of contract prices or any other suitable technique which precludes payment of the increased costs may be used.

(6) For required or desirable changes, the sum of all adjustments to prices of affected contracts may result in an aggregate increase or decrease in CAS-covered contract prices because such change are subject to equitable adjustments.

(7) For voluntary changes, any contract prices negotiated between the notification and effective dates of the change where the estimated contract costs were based on the previous cost accounting practice shall not be subject to the increased cost prohibition. Further, failure to reflect the new practice in contract prices negotiated during this period will not result in any

additional increased costs precluded by the Government on contracts subject to adjustment as a result of the change. If the cost impact of the new cost accounting practice change on contract prices negotiated between the notification date and effective date is a net downward adjustment, those contracts will be included with all other contracts in the backlog subject to adjustment for the purpose of determining whether increased costs in the aggregate exist due to the voluntary change. If the cost impact on contract prices negotiated between the notification date and the effective date is a net upward adjustment, they will be subject to equitable adjustments under this exception provision and, therefore, shall be excluded from the contract backlog that is subject to the increased cost preclusion procedures described above. This exemption is illustrated at 9903.407–1(h).

(e) If the parties fail to agree on the cost or price adjustments, the cognizant Federal agency official may make unilateral adjustments, subject to appeal as provided in the Disputes clause of the affected contracts.

9903.406 Noncompliances.

9903.406–1 General Types of Noncompliances.

(a) A contractor's cost accounting practices may be in noncompliance with Cost Accounting Standards, modifications or interpretations thereto, as a result of using a noncompliant cost accounting practice to estimate and negotiate costs on CAS-covered contracts, i.e., a cost estimating noncompliance; or by using a noncompliant cost accounting practice to accumulate and report costs on CAS-covered contracts, i.e., a cost accumulation noncompliance.

(b) Noncompliant cost accounting practices that result in material increased costs to the Government require correction and may result in contract price and/or cost adjustments as specified in 9903.406–3 and 9903.406–4 below. Noncompliant cost accounting practices that do not result in material increased cost to the Government should be considered a technical noncompliance and handled in accordance with 9903.406–5.

9903.406–2 Determination of Noncompliance.

(a) When the auditor finds a potential noncompliance, the auditor should, after sufficient discussion with the contractor to ensure all relevant facts are known, immediately issue an audit report to the cognizant Federal agency official describing the accounting practice and the basis for the opinion of noncompliance. Within 15 days of the receipt of the audit report of potential noncompliance, the cognizant Federal agency official should make an initial finding of compliance or noncompliance and advise the auditor and contractor.

(b) If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and the auditor of the determination.

(c) If an initial finding of noncompliance is made, the cognizant Federal agency official should immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days to agree, or disagree and submit reasons why the existing practices are considered to be compliant.

(d) If the contractor agrees with the initial finding of noncompliance, the contractor will correct the noncompliance, and submit a noncompliance cost impact proposal, generally within 60 days after agreement or other date to which both parties mutually agree, showing the impact of the noncompliance on the affected CAS-covered contracts in accordance with 9903.406–3 if it is a cost estimating noncompliance, and/or 9903.406–4 if it is a cost accumulation noncompliance.

(e) If the contractor disagrees with the initial noncompliance finding, the contractor shall provide the cognizant Federal agency official reasons why it disagrees with the initial finding. The cognizant Federal agency official shall evaluate the reasons why the contractor considers the existing practice to be compliant and again make a determination of compliance or noncompliance, and notify the contractor and auditor in writing. If the cognizant Federal agency official makes a determination of compliance, no further action is necessary other than to notify the contractor and auditor. If the cognizant Federal agency official believes that a noncompliance situation continues to exist, he/she should explain to the contractor the rationale for refuting the contractor's position. If the contractor agrees with the noncompliance, the procedures described in 9903.406–2(d) will be followed.

(f) Once the cognizant Federal agency official reaches a final position that a noncompliance exists, he/she shall issue a final determination to inform the contractor of the Government's position and that failure to agree will constitute a dispute under the Disputes clause of the contract. A final determination of noncompliance should also include a request for corrective action and a noncompliance cost impact proposal showing the impact of the noncompliance on CAS-covered contracts and subcontracts. The cost impact proposal should generally be submitted within 60 days after issuance of the final determination in accordance with 9903.406–3 if it is a cost estimating noncompliance, and/or 9903.406–4 if it is a cost accumulation noncompliance, as applicable.

(g) If the cognizant Federal agency official issues an initial determination of noncompliance on a revised accounting practice, and ultimately determines that the practice is compliant, the revised cost accounting practice should be handled in accordance with the procedures established in 9903.405.

9903.406–3 Cost Estimating Noncompliance.

(a) After a final determination of a cost estimating noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice.

(b) If the noncompliance occurs because the cost accounting practice used for estimating purposes is different than the disclosed and established cost accounting practice used for cost accumulation purposes, and the cognizant Federal agency official has found the cost accumulation practice to be compliant, the contractor shall first correct the noncompliance by replacing the noncompliant practice used to estimate costs with the compliant cost accounting practice used to accumulate and report actual contract costs. Where a previously submitted contract cost proposal based on the noncompliant cost estimating practice has not yet been negotiated, the contractor shall also take action to ensure that any subsequent contract cost negotiations of such proposals will be based on cost estimates that reflect the corrected and compliant cost accounting practice.

(c) Once the cognizant Federal agency official determines that the contractor's cost accounting practices used to estimate and accumulate costs will henceforth be consistent and compliant, the cognizant Federal agency official shall request the contractor to submit a noncompliance cost impact proposal, generally within 60 days from the date of the request, for all contracts negotiated based on the noncompliant practice. The cost impact proposal will show the negotiated contract values, by contract type, and the estimated contract values that would have been negotiated had the compliant practice

been used. The cognizant Federal agency official may establish contract value thresholds so that any contracts with an immaterial cost impact may be omitted from the cost impact proposal. The cost impact proposal shall be in sufficient detail for the cognizant Federal agency official to determine whether:

(1) any individual contracts are significantly overstated or understated as a result of the estimating noncompliance;

(2) the affected CAS-covered contract prices, by contract type, are, in the aggregate materially overstated; and

(3) any net increased costs were paid under CAS-covered contracts as a result of the noncompliant practice.

(d) The cognizant Federal agency official should use the materiality guidelines established in 9903.305 and 9903.404 to determine whether any individual contract price adjustments, or adjustments for the net overstatement of contract values by contract type, due to use of the noncompliant practice are warranted. Adjustments should be limited to amounts that are material. In no case shall the Government recover costs greater than the increased costs, in the aggregate, on the relevant contracts.

(e) If any aggregate increased costs were paid as a result of the overstatement of contract prices due to the noncompliant practice, the cognizant Federal agency official should take action to recover any material increased costs paid. The cognizant Federal agency official should also recover interest on these increased cost payments at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time payment by the United States was made to the time of recovery of the increased costs.

(f) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

(g) If the same noncompliant cost accounting practice was used to estimate and accumulate contract costs, the cognizant Federal agency official with the auditor's assistance, will evaluate the revised cost accounting practices for compliance with applicable Cost Accounting Standards, modifications or interpretations thereto. Corrective action and resolution of the noncompliant practice involves two distinct actions, one to resolve the cost estimating noncompliance in accordance with 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with 9903.406–4.

9903.406–4 Cost Accumulation Noncompliance.

(a) After a final determination of a cost accumulation noncompliance is issued by the cognizant Federal agency official, the contractor shall correct the practice by changing to a compliant cost accounting practice.

(b) If the noncompliance results from a failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, or failure to follow a disclosed or established practice consistently for cost accumulation purposes, the procedures established in this subsection should be used to resolve the impact due to the cost accumulation noncompliance. If the noncompliance results from a failure to comply with an applicable Cost Accounting Standard, modification or interpretation thereto, and requires a change in a disclosed or established cost accounting practice that was used for estimating and cost accumulation, two distinct actions are required, one to resolve the cost estimating noncompliance in accordance with 9903.406–3 and one to resolve the cost accumulation noncompliance in accordance with this 9903.406–4.

(c) Once the corrective action has been implemented, and the cognizant Federal agency official has determined that the accounting change, if any, meets the test of adequacy and compliance, the cognizant Federal agency official will request the contractor to submit a noncompliance cost impact proposal, generally within 60 days from the date of the request. The proposal shall identify the cost impact on CAS-covered contracts and any increased costs paid as a result of the cost accumulation noncompliance. Although overpayments due to cost accumulation noncompliances are generally recovered when the actual costs are adjusted to reflect a compliant practice, the cost impact proposal must show the total overpayments made by the United States during the period of noncompliance, so that the proper interest amount can be calculated and recovered as required by 9903.406–4(e).

(d) The level of detail to be submitted with a cost impact proposal for a cost accumulation noncompliance will vary with the circumstances. Normally, the cost impact proposal will identify the aggregate costs by contract type that were accumulated under the noncompliant cost accounting practice and the costs that would have been accumulated if the compliant cost accounting practice had been applied from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice. A GDM format similar to the one shown at 9903.405–4(a)(4) may be used to present the aggregate impact of the cost accumulation noncompliance for CAS-covered contracts performed during the noncompliant period. The cost impact proposal for a cost accumulation noncompliance is primarily developed and evaluated to determine if, and to what extent, increased costs were paid on covered contracts during the period of noncompliance. The minimum level of detail that can adequately support this determination should be used for the cost impact proposal. The level of detail required should be based on discussions between the contractor and the cognizant Federal agency official, with assistance from the auditor, and included in the cognizant Federal agency's official request for the cost impact proposal.

(e) Interest applicable to the increased costs paid to the contractor as a result of the noncompliance shall be computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payments by the United States was made to the time of recovery of the increased costs. If the cost were incurred and paid evenly over the fiscal years during which the noncompliance occurred, the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred.

(f) Negotiation and resolution of the cost impact should be accomplished in accordance with 9903.405–5(a).

9903.406–5 Technical noncompliances.

(a) If no material increased costs result, in the aggregate, as a result of a noncompliance, the cognizant Federal agency official shall notify the contractor in writing that:

(1) The practice is noncompliant via a final determination of noncompliance;

(2) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved; and,

(3) Corrective action should be taken.

(b) If the noncompliant practice is not corrected, the cognizant Federal agency official will inform the contractor that a technical noncompliance exists and that if the noncompliant practice subsequently results in materially increased costs to the Government, action will be taken to recover the increased costs plus applicable interest.

(c) The contractor shall notify the cognizant Federal agency official within 60 days of when the technical noncompliance becomes material.

9903.407 Illustrations.

9903.407–1 Change in Cost Accounting Practice—Illustrations.

The following illustrations deal with compliant changes in cost accounting practices. They are not meant to cover all possible situations, but rather to provide some guidelines in applying the procedures specified in 9903.405. The illustrations are meant to be considered only as examples. In actual cases, the individual circumstances need to be reviewed and considered to ensure equity for both parties.

(a) *Notification.*

(1) The contractor provides notification of a change in cost accounting practices in April and informs the Government that the change will have a retroactive applicability date of the beginning of the current year. In accordance with 9903.405–2(d), the contractor states that the reason for the beginning of the current year applicability date is to facilitate indirect cost allocations by use of one set of indirect cost rates for all work performed in the current year. The cognizant Federal agency official agrees to the proposed applicability date for covered contract costing purposes. After determination of adequacy and compliance, the cognizant Federal agency official requests a general dollar magnitude estimate for all contracts negotiated based on the previous accounting practice, including those negotiated after the applicability date of the change, plus a cost impact settlement proposal consisting of several contracts of each contract type which have the largest impact due to the cost accounting practice change.

(2) The contractor provides notification of a voluntary change in cost accounting practices in June with a planned retroactive applicability date at the beginning of the current year. The cognizant Federal agency official finds that the rationale for the retroactive applicability date does not justify retroactive implementation. The contractor is informed that the new practice can be applied no earlier than 60 days after the contractor's notification of the accounting change, and that a retroactive applicability date will result in a noncompliance with disclosed practices and disallowance of any resulting increased costs. The contractor notifies the cognizant Federal agency official that, to avoid a noncompliance condition, it will change the applicability date to the beginning of its next cost accounting period.

(3) The cognizant Federal agency official informs the contractor that a planned change in cost accounting practice is both adequate and compliant 35 days after date of notification. In accordance with 9903.405–2(f), the contractor immediately begins using the new cost accounting practice for cost estimating and cost negotiation purposes.

(b) *General Dollar Magnitude.*

(1) In accordance with 9903.405–3(b), the cognizant Federal agency official requests a general dollar magnitude (GDM) by contract type, plus a cost impact settlement proposal which would include the impact on a sufficient number of contracts of each contract type to negotiate the impact of a change in cost accounting practice. The contractor supports the GDM by using a contract profile which shows the percentage of the three year forward pricing rate base data which consists of existing CAS-covered contracts subject to adjustment, and the percentage of the CAS-covered contracts subject to adjustment for each contract type, i.e., CPFF, cost-plus-incentive-fee, fixed-price incentive and firm fixed-price. No contracts other than some of the individual contracts submitted with the cost impact settlement proposal extend out beyond the three year period. The cognizant Federal agency official, with the assistance of the auditor and using the cost impact settlement proposal data, determines that the GDM developed by the contractor reasonably approximates the aggregate impact, by contract type, of the accounting change on contracts subject to adjustment, i.e., contracts negotiated based on the previous practice. Pursuant to 9903.405–4(b)(1), the Government and contractor resolve the impact without a detailed cost impact proposal.

(2) The contractor reports a change in accounting practice which changes a direct cost element to an indirect expense. The cognizant Federal agency official, with the assistance of the auditor, determines that the GDM data submitted by the contractor does not adequately support the aggregate cost impact, by contract type, of the change in accounting practice. Therefore, in accordance with 9903.405–4(c)(1) and (2), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts, by contract type, to resolve the cost impact.

(c) *Cost Impact Settlement Proposal.*

(1) The contractor submits a cost impact settlement proposal which includes several contracts of each contract type showing the cost impact of the change in accounting practice. The impact is developed by computing the difference in the estimate-to-complete on these contracts using the old and new accounting practices. The cost impact settlement proposal includes all contracts that have a cost impact in excess of $1,000,000. The cognizant Federal agency official determines that the cost impact on each submitted contract was accurately computed, and reasonably supports the GDM submitted with the cost impact settlement proposal. In accordance with 9903.405–4(b)(3), the cognizant Federal agency official decides that, based on the circumstances, contracts having an impact in excess of $500,000 are significant enough to require adjustment. The cognizant Federal agency official requests the contractor to supplement the cost impact settlement proposal with contracts having an impact in excess of $500,000 so that the cost impact can be resolved without a detailed cost impact proposal. The cost impact is ultimately negotiated using the requested supplemental data.

(2) The same situation described in (c)(1) occurs except that the aggregate impact by contract type in the GDM can not be reconciled with the aggregate net impact of the individual contracts by contract type submitted with the cost impact settlement proposal. In accordance with 9903.405–4(b)(4), the cognizant Federal agency official requests a detailed cost impact proposal to include a sufficient number of contracts by contract type to resolve the cost impact.

(3) After reviewing the GDM and cost impact settlement proposal for a change in a cost allocation practice, the cognizant federal agency official decides in accordance with 9903.405–4(b)(4) that, due to materiality, no additional data is needed and no contract price or cost adjustments are warranted.

(d) *Detailed Cost Impact Proposal.*

(1) In accordance with 9903.405–4(b)(4), the cognizant Federal agency official submits a written request for a detailed cost impact proposal to include all contracts with an estimate-to-complete based on the old practice in excess of $5,000,000, summarized by contract type. After evaluation of the detailed cost impact proposal, the cognizant Federal agency official determines whether contract price and/or cost adjustments are required in accordance with 9903.405–5(c).

(2) [Reserved]

(e) *Offset Process.*

(1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that one firm

fixed-price contract is the only contract that exceeds the threshold established for contract price adjustment purposes. The impact on that contract is a reduced allocation of $1,000,000, requiring a downward adjustment to the contract price. When the cognizant Federal agency official applies the offset process to all other firm fixed-price contracts subject to adjustment by combining the increases and decreases, the result is a higher allocation in the aggregate amount of $400,000 on all other firm fixed-price contracts. Although no individual contracts making up this aggregate amount exceed the established threshold, the cognizant Federal agency official decides, in accordance with 9903.405–5(c)(5), that to achieve equity, an upward adjustment in the amount of $400,000 is warranted. Rather than offset this amount against the one contract exceeding the individual contract cost impact threshold, the cognizant Federal agency official, in accordance with 9903.405–5(b)(3), selects two high dollar firm fixed-price contracts for upward adjustment, in addition to the $1,000,000 dollar downward adjustment to the contract exceeding the threshold.

(2) The contractor makes simultaneous accounting practice changes at three of its business units at the direction of the next higher tier home office. The cognizant Federal agency official at the home office segment decides to handle this change as a voluntary change which cannot result in increased costs paid by the United States. Business Unit A has a cost impact on contracts subject to adjustment which results in a higher level of costs on flexibly-priced contracts of $1,000,000 in excess of the lower level of costs on firm fixed-price contracts. The impact on flexibly-priced contracts at Business Unit B and Business Unit C is a combined lesser allocation of costs of $1,200,000 in excess of the higher level of costs on firm-fixed price contracts, resulting in net decreased costs on Government flexibly-priced contracts at the three business units. To demonstrate that the accounting change did not result in aggregate increased costs to the Government, the contractor submits a consolidated cost impact proposal for the three business units at the home office level. As a result of considering the aggregate impact at the three business units by applying the netting process at the home office level, the cognizant Federal agency official, in accordance with 9903.405–5(b)(6), takes no action to preclude the increased costs on flexibly-priced contracts at Business Unit A. Individual contracts at each business unit that had cost impact exceeding established thresholds were adjusted upwards or downwards, as appropriate, for the amount of the cost impact.

(3) After determining the individual contracts subject to adjustment where the cost impact exceeded the established threshold for a change in actuarial cost method for computing pension costs, the contractor computes an aggregate impact for ''all other contracts'' amounting to $1,000,000 of lesser allocation of costs for flexibly-priced contracts and $1,200,000 of lesser allocation of costs on firm-fixed price contracts. The cognizant Federal agency official considers these amounts significant enough to warrant an adjustment. Since the impact on the flexibly-priced contracts represents decreased costs to the Government and the impact on the firm fixed-price contract represents increased costs to the Government, the contractor asks the cognizant Federal agency official to offset the increases and decreases and make a downward adjustment on the fixed-price contracts for only $200,000. The cognizant Federal agency official determines that by doing this, the final cost to the Government of a lesser cost paid of $1,200,000 would be materially different than if the individual contracts making up these aggregate amounts had been individually adjusted downward resulting in a lesser cost paid of $2,200,000. To achieve the desired result, the cognizant Federal agency official, in accordance with 9903.405–5(b) (1) and (2), selects a number of high dollar contracts and adjusts flexibly-priced contracts downward by $1,000,000 and firm fixed-price contracts downward by $1,200,000. In accordance with 9903.405–5(c)(3), an alternative technique, in lieu of adjusting contract prices, which achieves the same result of lesser cost paid of $2,200,000 may also be used for the aggregate ''all other contract'' cost impact adjustment.

(f) *Contract Price and Cost Adjustments.*

(1) After considering the materiality criteria in 9903.305, the cognizant Federal agency official decides that only contracts that have an impact that exceeds both $500,000 and .5% of the contract value will be subject to adjustment based on the impact of the accounting change. Of the individual contracts submitted with the cost impact settlement proposal, only nine contracts exceed this threshold. The aggregate impact of all other contracts by contract type is considered insignificant. In accordance with 9903.405–5(c)(4), the cognizant Federal agency official resolves the cost impact by adjusting only those contracts that exceed the individual contract cost impact threshold, and making no other adjustments, without the need for a detailed cost impact proposal.

(2) The same situation described in (f)(1) occurs except that the aggregate amount for all other contracts not exceeding the established individual contract cost impact threshold is considered significant enough by the Government to warrant adjustment. The Government had established $500,000 as the ''all other contract'' threshold. The cognizant Federal agency official selects two of the largest contracts that do not exceed the threshold, for each contract type, for adjustment in the amount of the aggregate ''all other contract'' impact. In order to avoid additional contract price adjustment action, the contractor, in accordance with 9903.405–5(c)(3), proposes an alternative adjustment technique to resolve the aggregate ''all other contract'' impact amount. The cognizant Federal agency official determines that the proposed alternative adjustment technique accomplishes the same approximate result as adjusting the two selected contracts. The cognizant Federal agency official agrees to use the alternative technique, in addition to adjusting the individual contracts that exceed the threshold, to resolve the impact of the change in cost accounting practice.

(g) *Increased Cost.*

(1) In analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that only two firm fixed-price contracts exceed the threshold for contract price adjustment purposes. All other amounts related to the cost impact are considered immaterial. The change is a voluntary change with no increased costs allowed. The impact on the two contracts are a lower allocation of costs in the amount of $1,000,000 for contract A and a higher allocation of costs of $2,000,000 for contract B. In order to preclude increased costs paid by the United States as a result of the change, the cognizant Federal agency official, in accordance with 9903.405–5(d)(3), adjusts Contract A downward by $1,000,000, and limits the upward adjustment on Contract B to $1,000,000. This action adjusts the contracts to reflect the impact of the change to the maximum extent possible, while precluding a higher level of costs being paid by the United States.

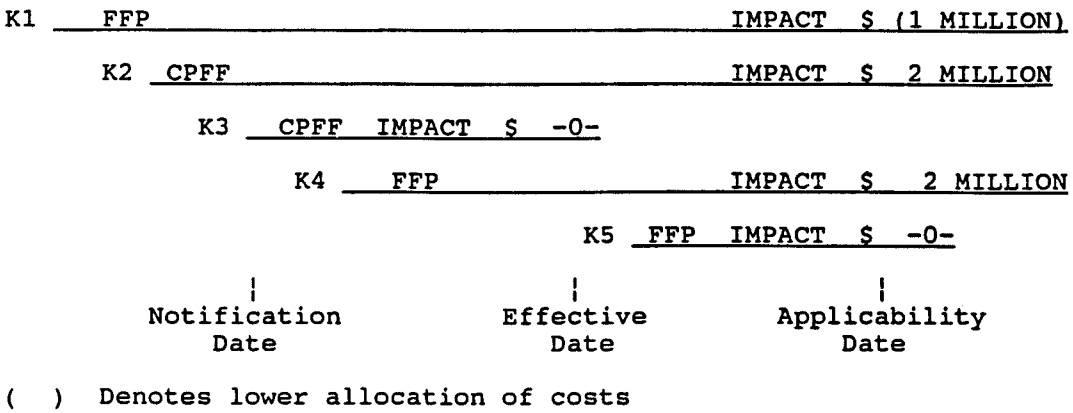
(2) The same situation described in (g)(1) occurs except that contract B is a CPFF contract. In accordance with

9903.405–5(d)(3), the cognizant Federal agency official adjusts the firm fixed-price contract downward by $1,000,000, and the estimated contract cost ceiling on the CPFF contract upward by $1,000,000. The cognizant Federal agency official determines that the higher level of costs on the CPFF contract is coming from a shift of costs from both Contract A and other contractor non-government work. In accordance with 9903.405–5(d)(1), action must be taken to preclude the additional $1,000,000 of increased cost on the CPFF contract. An appropriate adjustment technique is used to preclude the payment of the increased costs in accordance with 9903.405–5(d)(3).

(3) After analyzing the contractor's cost impact proposal, the cognizant Federal agency official determines that five contracts exceed the threshold established for contract price adjustment purposes. The impact on all other contracts, both individually and in the aggregate, is considered insignificant. The five contracts requiring adjustment are 3 firm fixed-price contracts and 2 CPFF contracts. The total impact on the 3 firm fixed-price contracts is a lower allocation of costs amounting to $3,000,000. The total impact on the 2 CPFF contracts is a higher allocation of costs of $2,000,000. The cognizant Federal agency official adjusts the contracts upward and downward for the amount of the impacts. In accordance with 9903.405–5(d) (1) and (3), no further action is needed to preclude increased costs paid, since the impact to the Government after contract price adjustments are made is a lesser cost paid in the amount of $1,000,000.

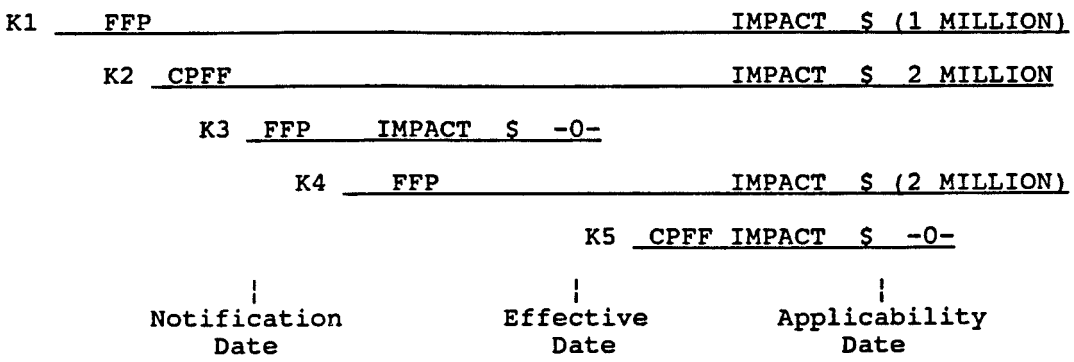
(h) *Contracts negotiated between notification date and effective date (see 9903.405–5(d)(7)).*

(1)(i) The contractor has the following covered contracts in existence during the period from the notification date to the applicability date of a voluntary accounting change subject to no increased costs:



(ii) Only contracts K1, K2 and K4 are subject to adjustment based on the accounting change, i.e., they were negotiated based on the old practice and will have costs accumulated beyond the applicability date based on the new practice. K3 was negotiated based on the old practice, but will be completed prior to the applicability date. K5 was negotiated after the effective date and, therefore, based on the new practice. Since K4 was negotiated between the notification date and effective date of the change, it is subject to an equitable adjustment and not subject to preclusion of increased costs paid. Further, the failure to base the negotiated amount of K4 on the new practice can not result in any additional costs precluded by the Government. K4 is a firm fixed-price contract. The impact of the accounting change on K4 is a higher allocation of costs in the amount of $2 million. K4 receives an upward equitable adjustment in this amount. K1 is a firm fixed-price contract with a cost impact of a lower allocation of costs in the amount of $1 million. K2 is a CPFF contract with a higher allocation of costs in the amount of $2 million. K1 is adjusted downward by $1 million. K2 is adjusted upward by $1,000,000. Although the total impact of the change is an overall higher allocation of $3 million, the Government needs to take action to preclude costs for only the $1 million on the CPFF contract which is over and above the $1 million impact on the firm fixed-price contract, since contract K4 is not subject to the no increased cost provision.

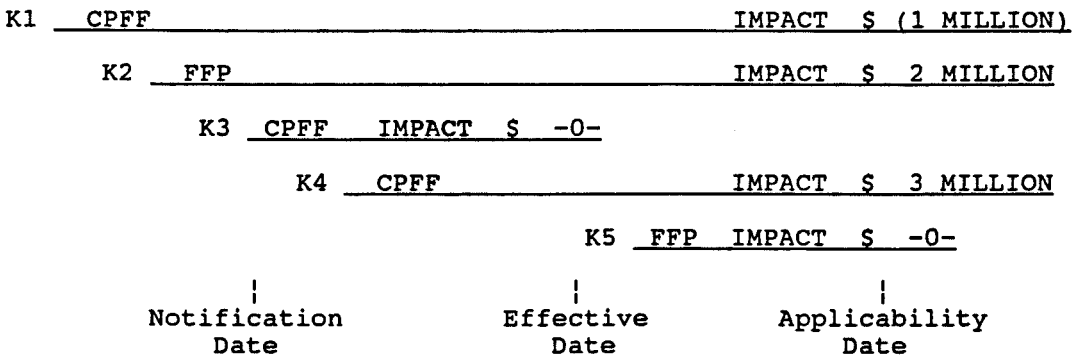
(2)(i) The contractor has the following covered contracts in existence during the period from the notification date to the applicability date of a voluntary accounting change subject to no increased costs:



( ) Denotes lower allocation of costs

(ii) Only contracts K1, K2 and K4 are subject to adjustment based on the accounting change, i.e., they were negotiated based on the old practice and will have costs accumulated beyond the applicability date based on the new practice. K3 was negotiated based on the old practice, but will be completed prior to the applicability date. K5 was negotiated after the effective date and, therefore, based on the new practice. Since K4 was negotiated between the notification date and effective date of the change, it is subject to an equitable adjustment and not subject to preclusion of increased costs paid. Further, the failure to base the negotiated amount of K4 on the new practice can not result in any additional costs precluded by the Government. K4 is a firm fixed-price contract. The impact of the accounting change on K4 is a lesser allocation of costs in the amount of $2 million. K4 receives a downward equitable adjustment in this amount. K1 is a firm fixed-price contract with a cost impact of a lesser allocation of costs in the amount of $1 million. K2 is a CPFF contract with a higher allocation of costs in the amount of $2 million. K1 is adjusted downward by $1 million. K2 is adjusted upward by $2,000,000. There is no need for the Government to take action to preclude increased costs after making contract price adjustments because the downward adjustments on K1 and K4 exceed the higher allocation of costs on K2, resulting in net decreased costs paid of $1 million as a result of the change.

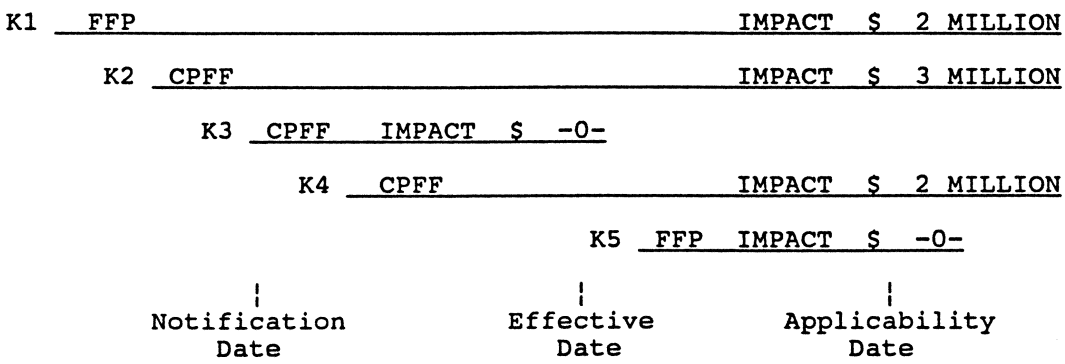
(3)(i) The contractor has the following covered contracts in existence during the period from the notification date to the applicability date of a voluntary accounting change subject to no increased costs:



( ) Denotes lower allocation of costs

(ii) Only contracts K1, K2 and K4 are subject to adjustment based on the accounting change, i.e., they were negotiated based on the old practice and will have costs accumulated beyond the applicability date based on the new practice. K3 was negotiated based on the old practice, but will be completed prior to the applicability date. K5 was negotiated after the effective date and, therefore, based on the new practice. Since K4 was negotiated between the notification date and effective date of the change, it is subject to an equitable adjustment and not subject to preclusion of increased costs paid. Further, the failure to base the negotiated amount of K4 on the new practice can not result in any additional costs precluded by the Government. K4 is a CPFF contract. The impact of the accounting change on K4 is a higher allocation of costs in the amount of $3 million. K4 receives an upward equitable adjustment in this amount. K1 is a CPFF contract with a cost impact of a lesser allocation of costs in the amount of $1 million. K2 is a firm fixed-price contract with a higher allocation of costs in the amount of $2 million. K1 is adjusted downward by $1 million. K2 is adjusted upward by $1 million. There is no need for the Government to take action to preclude increased costs after making contract price adjustments because the upward adjustment on K2 has been limited to the downward adjustment of K1 (since K2 is a firm fixed-price contract the additional $1 million will not be paid by the United States) and K4 is not subject to preclusion of increased costs.

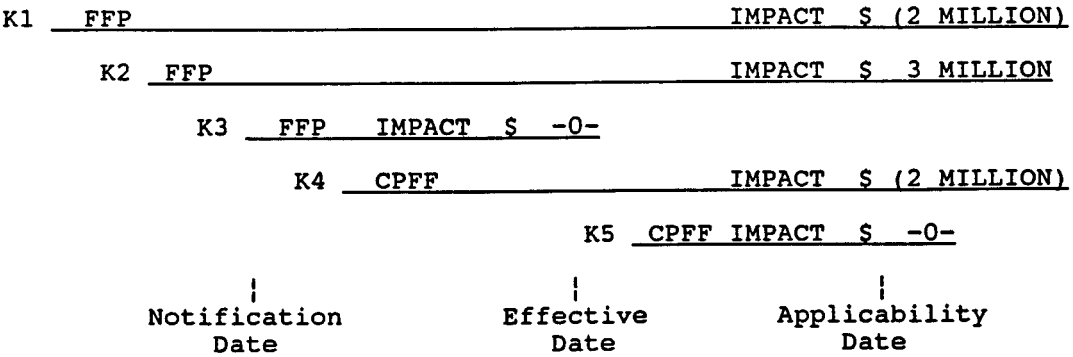
(4)(i) The contractor has the following covered contracts in existence during the period from the notification date to the applicability date of a voluntary accounting change subject to no increased costs:



( ) Denotes lower allocation of costs

(ii) Only contracts K1, K2 and K4 are subject to adjustment based on the accounting change, i.e., they were negotiated based on the old practice and will have costs accumulated beyond the applicability date based on the new practice. K3 was negotiated based on the old practice, but will be completed prior to the applicability date. K5 was negotiated after the effective date and, therefore, based on the new practice. Since K4 was negotiated between the notification date and effective date of the change, it is subject to an equitable adjustment and not subject to preclusion of increased costs paid. Further, the failure to base the negotiated amount of K4 on the new practice can not result in any additional costs precluded by the Government. K4 is a CPFF contract. The impact of the accounting change on K4 is a higher allocation of costs in the amount of $2 million. K4 receives an upward equitable adjustment in this amount. K1 is a firm fixed-price contract with a cost impact of a higher allocation of costs in the amount of $2 million. K2 is a CPFF contract with a higher allocation of costs in the amount of $3 million. No upward adjustment is made to K1 or K2 because they are subject to the no increased cost provision. Further, the Government must take action to preclude the increased costs of $3 million from being paid on the CPFF contract. The cognizant Federal agency official does not have to take action to preclude the payment of the higher allocation of costs on K4 since this contract is not subject to the no increased cost provision.

(5)(i) The contractor has the following covered contracts in existence during the period from the notification date to the applicability date of a voluntary accounting change subject to no increased costs:



( ) Denotes lower allocation of costs

(ii) Only contracts K1, K2 and K4 are subject to adjustment based on the accounting change, i.e., they were negotiated based on the old practice and will have costs accumulated beyond the applicability date based on the new practice. K3 was negotiated based on the old practice, but will be completed prior to the applicability date. K5 was negotiated after the effective date and, therefore, based on the new practice. Since K4 was negotiated between the notification date and effective date of the change, it is subject to an equitable adjustment and not subject to preclusion of increased costs paid. Further, the failure to base the negotiated amount of K4 on the new practice can not result in any additional costs precluded by the Government. K4 is a CPFF contract. The impact of the accounting change on K4 is a lesser allocation of costs in the amount of $2 million. K4 receives an downward equitable adjustment in this amount. K1 is a firm fixed-price contract with a cost impact of a lesser allocation of costs in the amount of $2 million. K2 is a firm fixed-price contract with a higher allocation of costs in the amount of $3 million. K1 is adjusted downward by $2 million. K2 is adjusted upward by $3 million. There is no need for the Government to take action to preclude increased costs after making contract price adjustments because the downward adjustments on K1 and K4 exceed the higher allocation of costs on K2, resulting in net decreased costs paid of $1 million as a result of the change.

(i) *GDM/Cost Impact Settlement Proposal Based on Contractor Model and Profile*

(1) The contractor has developed a model and profile which is used for the general dollar magnitude estimate and cost impact settlement proposal. The model and profile data are updated

whenever circumstances change and dictate revision to the data.

(2) For a voluntary accounting change, the contractor model and profile is based on same three year forecast of direct and indirect cost data that supports the contractor's forward pricing rates used to estimate indirect costs in price proposals. The profile shows that 80% of the forecasted allocation base amounts in year 1 are comprised of existing covered contracts subject to adjustment, 50% of the amounts in year 2 are comprised of covered contracts subject to adjustment, and 20% of the amounts in year 3 are comprised of existing covered contracts subject to adjustment. Of the amounts applicable to CAS-covered contracts subject to adjustment, the contractor's model and profile shows the following breakdown by contract type:

	In percent		
	Year 1	Year 2	Year 3
Direct Labor Base:			
CPFF	30	25	20
CPIF/FPI	20	21	22
FFP	50	54	58
Total Cost Input Base:			
CPFF	25	22	21
CPIF/FPI	15	16	17
FFP	60	62	62

(3) The voluntary accounting change, which the cognizant Federal agency official has determined to be adequate and compliant, results in a transfer of a $5 million function from the G&A pool to the overhead pool. The cognizant Federal agency official has determined that only individual contracts that have a cost impact in excess of $100,000 will be considered for adjustment, provided that the impact exceeds .5% of the contract value. He/she has also determined that $500,000 will be the adjustment threshold for the ''all other contracts'' amounts by contract type. To support the general dollar magnitude estimate, the contractor includes in the cost impact settlement proposal three (3) contracts having the largest estimate-to-complete, by contract type. Based on the profile and model the contractor computes the following general dollar magnitude impact by contract type:

	Year 1	Year 2	Year 3	Aggregate Impact*
CPFF	$242	$77	$(4)	$315
CPIF/FPI	225	110	43	378
FFP	(310)	(189)	(18)	(517)

*Dollars in thousands.
( ) Denotes lesser allocation of costs.

(4) The aggregate impact amounts show a higher allocation of $693,000 on flexibly-priced contracts and a lesser allocation of $517,000 on firm fixed-price contracts. Only one contract of each contract type submitted with the cost impact settlement proposal exceeds the threshold established. K1 is a CPFF contract with an impact of a higher allocation of $200,000. K2 is a CPIF contract having an impact of a higher allocation of $300,000. And K3 is an FFP contract having an impact of a lesser allocation of $400,000. After deducting the impact of the three contracts exceeding the threshold, the ''all other contracts'' amounts are a higher allocation of $115,000 for CPFF contracts, a higher allocation of $78,000 for incentive type contracts, and a lesser allocation of $117,000 for FFP contracts.

(5) Since the ''all other contracts'' amounts are less than the threshold for each contract type, the cognizant Federal agency official requires no adjustments for these amounts. The cognizant Federal agency official adjusts the FFP contract downward by $400,000 to preclude the increased costs on this contract. Since this is a no increased cost change, the upward adjustments to the flexibly-priced contracts must be limited to $400,000. The cognizant Federal official decides to adjust the target cost on the CPIF contract upward by $300,000, with an appropriate upward adjustment of the target fee, in order to avoid distortions of contract incentive provisions based on the estimated higher allocation of costs (see 9903.405–5(b)(5)). He then limits the upward adjustment to the CPFF contract to $100,000. Additional action must then be taken to preclude the additional $100,000 of costs on the CPFF contract. After discussion with the contractor, the cognizant Federal agency official agrees with the contractor's proposal to delete the $100,000 from the cumulative claimed costs on the contract either when the contract reaches the estimated contract cost ceiling or prior to the submission of the final voucher, whichever comes first.

9903.407–2 Noncompliance illustrations.

The following illustrations deal with recovery of increased costs due to noncompliant practices. They are not meant to cover all possible situations, but rather to provide some guidelines in applying the procedures in 9903.406. The illustrations are meant to be considered only as examples. In actual cases, the individual circumstances need to be reviewed and considered to ensure equity for both parties.

(a) *Estimating Noncompliance.*

(1) The cognizant Federal agency official determines that a cost accounting practice that the contractor has used for estimating and negotiating costs on CAS-covered contracts is noncompliant with an applicable Cost Accounting Standard. The practice is also different than the compliant, disclosed and established practice used for cost accumulation purposes. Therefore, the impact of the noncompliance only affects negotiated contract values under which the contractor used the noncompliant practice to estimate the costs and any outstanding cost proposals not yet negotiated. The cognizant Federal agency official directs the contractor to change its estimating practices so that costs will be estimated, accumulated and reported consistently based on the contractor's established cost accounting practices and not use as a basis for the negotiation of contract prices any previously submitted contract cost estimates which were predicated on the noncompliant cost accounting practice. The cognizant Federal agency official then proceeds to request a cost impact proposal for the impact of the noncompliant practice on covered contracts, as well as the amount of the increased costs paid as a result of the noncompliance. In accordance with 9903.406–3(d), the cognizant Federal agency official determines that the impact on contracts less than $10,000,000 would be immaterial, and limits the cost impact proposal to contracts of $10,000,000 or more in value. The cost impact proposal shows that the contract values are overstated (in the aggregate) by a significant

amount due to use of the noncompliant practice. The contracts are adjusted downward to reflect use of the compliant practice. Of the total amount of the overstatement in contract prices, the cognizant Federal agency official determines that 50 percent had been paid as of the date of the adjustment of the contract values. The cognizant Federal agency official, with the assistance of the auditor, computes and recovers interest applicable to the increased costs paid, for the period from date of payment to date of recovery of the increased costs paid.

(2) The cognizant Federal agency official determines that the cost accounting practice used by the contractor to estimate costs is noncompliant and different than the contractor's compliant, disclosed and established cost accounting practice. An analysis of the cost impact proposal developed by the contractor shows that, except for two large fixed-price contracts, the effect on negotiated contract values is immaterial. The cognizant Federal agency official determines that the impact on the two large fixed-price contracts is material enough to warrant an adjustment to reflect the application of the compliant disclosed practice. Since the amount of the understatement of the one contract exceeds the amount of the overstatement of the other contract, the Government, in accordance with 9903.406–3(c)(2), limits the upward adjustment of the understated contract to the amount of the downward adjustment of the overstated contract. The cognizant Federal agency official further determines that the noncompliant practice did not result in increased cost paid by the United States. Therefore, no action was required to recover increased cost paid and applicable interest.

(b) *Cost Accumulation Noncompliance.*

(1) The cognizant Federal agency official makes a final determination that the contractor is using an accounting practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. He/she further determines that the cost accounting practices used for cost estimating purposes are compliant. The noncompliant practice relates to the accumulation of actual indirect expenses. At the direction of the cognizant Federal agency official, the contractor implements the same compliant practice used to estimate costs for cost accumulation and reporting purposes. The change to the compliant method for cost accumulation and reporting purposes results in automatic adjustment of actual costs and recovery of all increased cost paid due to the noncompliance. The contractor submits a cost impact proposal showing the amount of the increased cost paid during the period of noncompliance by using a method that does not require submission of individual contract data. The cognizant Federal agency official, with the assistance of the auditor, determines that the cost impact proposal reasonably reflects the extent of the increased costs paid. It is also determined that the increased costs were paid evenly over the period of the noncompliance and the interest on the increased costs paid is computed using the midpoint of the noncompliance as a baseline. Since the increased costs have already been recovered through the adjustment of actual costs, the Government takes action only to recover the applicable interest by requesting a payment for the amount of the interest from the contractor.

(2) The cognizant Federal agency official determines that the contractor has accumulated costs based on a cost accounting practice that is not compliant with CAS 9904.402 and is not consistent with its disclosed and established practice for some, but not all, of its CAS-covered contracts. Since the noncompliance involves accounting for direct costs as indirect costs, the cognizant Federal agency official determines that individual contract data is required in order to compute the extent of increased costs paid, if any, as a result of the noncompliance. In accordance with 9903.406–4(d), the cognizant Federal agency official, with the assistance of the auditor, determines and discusses with the contractor the level of detail needed to compute the impact on costs paid as a result of the noncompliance. The cognizant Federal agency official submits a written request to the contractor for a noncompliance cost impact proposal that specifies the level of detail required. After analyzing the cost impact proposal, the cognizant Federal agency official determines that the amount of the increased costs paid is immaterial and does not warrant action to recover the increased costs, plus applicable interest. The cognizant Federal agency official takes action in accordance with 9903.406–5, Technical Noncompliance.

(3) The cognizant Federal agency official determines that the contractor is using a practice for cost accumulation purposes that is noncompliant with an applicable Cost Accounting Standard. He/she further determines that the noncompliant practice was also used for estimating purposes. In order to determine the extent of increased costs, if any, due to both overstated contract prices and billings of costs accumulated on CAS-covered contracts, the Government, in accordance with 9903.406–4(b), requests two separate cost impact proposals to cover increased costs. The cost impact proposal for the overstated contract prices will be in accordance with the cost impact proposal described in 9903.406–3, and the cost impact proposal for the overbilled accumulated costs will be as described in 9903.406–4.

[FR Doc. 96–23409 Filed 9–17–96; 8:45 am]

BILLING CODE 3110–01–P

Federal Register

Wednesday
September 18, 1996

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Establishment of a Youth Waterfowl Hunting Day for the 1996–97 Migratory Game Bird Hunting Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AD69

Migratory Bird Hunting; Final Rule on the Establishment of a Youth Waterfowl Hunting Day for the 1996–97 Migratory Game Bird Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document (August 15, 1996, Federal Register 61 FR 42500) the establishment of a special youth waterfowl hunting day for the 1996–97 duck-hunting season. This final rule contains final frameworks for the special youth waterfowl hunting day from which States may select season dates, limits, and other options for the 1996–97 duck-hunting seasons. The effect of this final rule is to facilitate the selection of a youth hunting day by the States to further the annual establishment of the migratory bird hunting regulations. State selections will be published in the Federal Register as amendments to § 20.105 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on September 18, 1996.

ADDRESSES: States should send their season selections to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1996

On March 22, 1996, the Service published in the Federal Register (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the Federal Register (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, detailing information on the 1996–97 regulatory schedule, and announcing the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the Federal Register (61 FR 30490) a third document describing the Service's proposed regulatory alternatives for the 1996–97 duck hunting season and the Service's consideration of a proposed youth waterfowl hunting day. On August 15, 1996, the Service published in the Federal Register (61 FR 42500) a proposal for the establishment of a special youth waterfowl hunting day.

This rulemaking prescribes the final framework for establishing a youth waterfowl hunting day for the 1996–97 migratory bird hunting season. The Service considered all comments received to date.

Written Comments Received

The Service's June 14 Federal Register contained a notice of consideration and preliminary guidelines for establishing a special youth waterfowl hunting day and opened a public comment period. The Service received 145 comments specifically addressing the establishment of a youth waterfowl hunting day. Comments, responses to comments, and modifications to the preliminary guidelines were announced in the August 15 Federal Register proposed rulemaking. The public comment period on the proposed rule closed on August 26, 1996. As of August 30, 1996, the Service had received an additional 15 comments on the proposed youth waterfowl hunting day. Comments and modifications to the proposed guidelines announced in the August 15 Federal Register are discussed below. The headings correspond to the numbered items in the March 22 Federal Register.

1. Ducks

G. Special Seasons/Species Management

Written Comments: The Ohio Division of Wildlife commended the Service for its proposal to provide a special day of hunting for young hunters.

The Pennsylvania Game Commission (Pennsylvania) fully supported the concept of a youth waterfowl hunting day. They believed a day devoted for youth to experience and learn about waterfowl hunting would serve to foster involvement and support for waterfowl conservation. They further believed that youth should be encouraged to participate in these activities and that the continued conservation of all migratory birds depends on the future attitudes and actions of youth. While they supported the Service's proposed guidelines, Pennsylvania requested that licensing requirements for the accompanying adult be left to the discretion of the individual State. They also requested the Service thoroughly evaluate harvest and hunter activity resulting from the special youth hunt.

The Arkansas Game and Fish Commission (Arkansas) was pleased that the Service had proceeded with the youth hunting day initiative for the 1996–97 season and expected that the experiences shared by the participants would increase the appreciation for natural resources. However, Arkansas requested that the guidelines for selecting a youth hunting day include primary and secondary school vacation days as well as weekends and holidays.

The Georgia Wildlife Resources Division (Georgia) and the South Carolina Department of Natural Resources (South Carolina) also supported the special youth hunt concept, but were concerned about the Service's proposed age limitation. While both States understood the age requirements imposed by the Federal migratory waterfowl hunting stamp, Georgia believed that the Service's proposed youth participation age of 15 or younger would serve to complicate an already complex issue. Both States recommended final frameworks that allow States to select the most appropriate participation age.

An individual from Wisconsin supported the proposal for a special youth waterfowl hunting day, citing the educational opportunities for young people to experience safe, high-quality waterfowl hunting.

An individual from Minnesota expressed concern about youth hunters scaring birds, which would then not be available for the opening day of the regular duck season. Further, he supported allowing the accompanying adult to carry a gun to facilitate the pursuit of crippled birds.

Another individual from Minnesota opposed establishing a special youth hunt because of the special status granted youth, the disruption of the regular season opening, and the potential abuses of the special hunt by accompanying adults.

The Animal Care and Welfare (ACW), two individuals from Virginia, one person from New York, one individual from Wisconsin, and one person from California opposed the establishment of a special youth hunting day. Collectively, they believed the Service should represent the views of both hunters and nonhunters. The ACW and two of the commenters believed the

Service was acting as a public relations recruiting firm for hunters. They believed the Service should encourage youths to participate in nonconsumptive wildlife recreation, such as wildlife photography, rather than hunting. Several commenters also noted that the mallard population slightly decreased last year and as such, believed it biologically reckless of the Service to increase hunting pressure.

The Fund for Animals, Inc. (FFA) opposed the establishment of a youth waterfowl hunting day and protested the public and regulatory process under which the Service was considering the proposal. FFA objected to the short public comment period and believed the Service had already decided to implement the proposal and was merely going through the motions of public comment to satisfy legal requirements. Further, FFA believed the Service lumped comments together and did not adequately discuss or respond to comments of opposition in the August 15 proposed rule. Such action, FFA argued, suggests the Service does not consider ethical and moral concerns deserving of serious consideration. The FFA also questioned States actions of setting season dates and bag limits based on the Service's proposed frameworks and urged the Service to issue regulations prohibiting States from anticipating Service actions. The FFA stated that this practice reflected adversely on the integrity and credibility of the Service's rulemaking process. The FFA urged the Service to extend the comment period and to hold public hearings specifically on this initiative.

The FFA also objected to the Service's proposed youth hunt for social, moral, and ethical reasons. FFA believed the promotion of youth hunting was not an appropriate endeavor for the Federal government. FFA argued the Service should not encourage violence and killing, but should teach children to be kind to animals. As an alternative, the FFA proposed the Service sponsor a youth waterfowl photography day, arguing that such a day would have broader public support. Further, FFA commented that inexperienced youth hunters would result in a higher bird wounding rate and that the Service should establish a minimum participation age of 14 or 15. Lastly, FFA noted that since the recovery of the duck population was still questionable, there should be no increase in harvest.

Service Response: The Service appreciates the comments and suggestions of the various States, organizations, and individuals regarding the establishment of a youth waterfowl hunting day. While the Service recognizes there are organizations and individuals opposed to this proposal on the basis of general opposition to hunting, the Service believes recreational sport hunting is a wise and compatible use of our nation's renewable natural resources. As the Service previously stated, we recognize the valuable contributions of both hunters and non-hunters to natural resource conservation. However, the Service is mandated by various legislation to provide for the long-term conservation of migratory birds and, to regulate the hunting of migratory birds, including waterfowl. The Service encourages youth participation in all wildlife-oriented recreational activity, non-consumptive as well as consumptive.

Traditionally, the Service has viewed its role as including the permitting of recreational harvest opportunities consistent with long-term resource conservation for all Americans. To meet this objective, the Service believes a well-educated and properly trained hunting constituency is in the best interest of long-term resource conservation. Thus, the Service views the establishment of a youth hunting day as a unique educational opportunity which will help ensure safe, high-quality hunting for future generations of Americans. The Service's intent is not to recruit youth hunters, but to provide the best and safest learning environment for our youth who are interested in hunting.

Further, the Service believes establishing such a day is consistent with our responsibility to provide general education and training in the wise use of our nation's valuable wildlife resources. The Service believes the long-term conservation of North America's migratory bird resources depends on the future attitudes and actions of today's youth and that the special youth day will assist in the formation and development of a conservation ethic in future generations. The Service's intent in establishing this special day is to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and contribute to the long-term conservation of the migratory bird resource.

While the Service understands the various comments from the States regarding the age requirements of the participating youth and FFA's request to establish a minimum participating age, we continue to believe that any age criteria should be consistent with previous definitions of youth hunters established in other Federal legislation. Under the Migratory Bird Conservation Act of 1934, a youth is defined as a person less than 16 years of age. To maintain consistency and to avoid confusion in this initial trial year, the Service believes that this definition should be employed for the youth hunting day. However, the Service is committed to working with the States and the Flyway Councils on this criterion prior to any proposed youth hunt next year.

Regarding Arkansas' request that guidelines for selecting a youth day include school vacation days, the inclusion of primary and secondary school vacation days seems logical and meets the Service's original intent of affording the maximum opportunity for participation by youth hunters. Thus, the Service has revised the final guidelines accordingly to reflect this modification.

Regarding FFA's comment on the abbreviated comment period and their request for an extension, the Service reminds them that the rulemaking process for migratory game bird hunting operates under severe time constraints. However, the Service has repeatedly stated that it intends that the public be given the greatest possible opportunity to comment. Thus, when the Service announced its intent to consider establishing a youth waterfowl hunting day in the June 14 Federal Register and its proposal for a youth day in the August 15 Federal Register, the Service established what it believed were the longest periods possible for public comment and input. In light of the fact that the Service sought and received significant public comment in the development and establishment of this special youth hunt, we believe that allowing a comment period past the already established closing date is contrary to the public interest. Further, extending the comment period would not allow the States sufficient time to select season dates, to communicate those selections to the Service, and to establish and publicize the regulations and procedures necessary to implement their decisions. The Service has given every consideration to the comments and has decided to finalize the proposal for the reasons stated. Because it has provided the two comment periods referred to above, the Service believes it has provided adequate opportunity for public comment and has decided not to extend the comment period or hold public hearings. To do so would delay this beneficial resource-oriented educational opportunity.

Regarding FFA's belief that the Service lumped comments together and

did not provide adequate discussion or response, the Service indicates for the record that it considered all comments received on both the notice of consideration and the proposed rule. Time, space, and costs prevent us from providing an individual response to each commenter on duplicative issues.

With regard to FFA's comment on State adoption of its own regulations based on anticipated Federal final action, we note that States take those actions on their own with the risk that they may have to amend their regulations if the Federal final action differs from the proposal. The Service is in no way bound by or constrained by such State action.

Several commenters incorrectly noted that duck populations slightly decreased from last year, and as such, the Service should not increase hunting pressure. The Service notes that the 1996 estimate of total ducks in the traditional survey area was 37.5 million, an increase of 5 percent from that in 1995 and 16 percent higher than the long-term average. Further, the total duck fall flight forecast is approximately 89.5 million birds, compared to 77 million last year. This estimate is the highest recorded since calculations were initiated in 1970 and 16 percent higher than last year. Because the special 1-day hunt would be limited to youths, the Service believes that waterfowl populations can support the additional harvest.

The Service will continue to evaluate this opportunity annually, including an assessment of possible expansion and the need for additional criteria. The Service believes this opportunity should be offered during the 1996–97 hunting season and that further dialogue and refinements can be incorporated in future years.

Therefore, the Service is establishing the following guidelines for the 1996–97 season:

1. States may select 1 day per duck-hunting zone, designated as ''Youth Waterfowl Hunting Day'', in addition to their regular duck seasons.

2. The day must be held outside any regular duck season on either a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate.

3. The day could be held up to 10 days before or after any regular duck-season frameworks or within any split of a regular duck season.

4. The daily bag limit may include ducks, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species restrictions would remain in effect.

5. Youth hunters must be 15 years of age or younger.

6. An adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

7. The special youth hunt day will be considered a trial for the 1996–97 season and will be evaluated by the Service.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulations will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 22, 1996, Federal Register, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Service examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1996–97 hunting season are authorized under 16 U.S.C. 703–712, and 16 U.S.C. 742 a—j.

Dated: September 11, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–23925 Filed 9–17–96; 8:45 am]

BILLING CODE 4310–55–F

Reader Aids

Federal Register

Vol. 61, No. 182

Wednesday, September 18, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46373–46528 3
46529–46698 4
46699–47018 5
47019–47408 6
47409–47660 9
47661–47798 10
47799–48062 11
48063–48398 12
48399–48600 13
48601–48814 16
48815–49044 17
49045–49236 18

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6915 48063
6916 48815

Executive Orders:
October 29, 1913 (Revoked in part PLO 7216) 48720
12865 (Continued by Notice of Sept. 16) 49047
12975 (Amended by EO 13018) 49045
13017 47659

Administrative Orders:
Memorandums:
August 30, 1996 46695
Presidential Determinations:
No. 96–42 of August 24, 1996 46699
No. 96–43 of August 27, 1996 46529
No. 96–50 of September 4, 1996 48601
No. 96–51 of September 4, 1996 48603
Notice of September 16, 1996 49047

4 CFR

Proposed Rules:
7 47240

5 CFR

317 46531
412 46531
532 ..... 47661, 48817
1201 49049
2635 48733

Proposed Rules:
316 47450
1312 48855

7 CFR

12 47019
27 48399
52 ..... 48065, 48066
301 ..... 47662, 47663
319 47663
718 49049
911 ..... 46701, 49050
915 ..... 46701, 49050
1075 47038
1412 49049
1789 48605

Proposed Rules:
46 47674
271 47680
275 47680
457 ..... 46401, 48416, 48420, 48423
906 49078
998 47786
1001 49081
1002 49081
1004 49081
1005 49081
1006 49081
1007 49081
1011 49081
1012 49081
1013 49081
1030 49081
1032 49081
1033 49081
1036 49081
1040 49081
1044 49081
1046 49081
1049 49081
1050 49081
1064 49081
1065 49081
1068 49081
1075 49081
1076 49081
1079 ..... 46571, 49081
1106 49081
1124 49081
1126 49081
1131 49081
1134 49081
1135 49081
1137 ..... 47092, 49081
1138 49081
1139 49081
1160 47093
1780 48075
981 48428

8 CFR

3 ..... 46373, 47550
103 ..... 46373, 47039, 47550
210 46534
240 47667
242 ..... 46373, 47550
245a 46534
264 ..... 46534, 47668
274a 46534
282 47799
299 ..... 46534, 47799
499 47799

Proposed Rules:
322 47690

9 CFR

54 47669
71 47669
75 47669

Proposed Rules:
78 48430
319 47453
381 47453

10 CFR

Ch. 1 46537

Proposed Rules:

34 48645

12 CFR

3 47358
208 47358
225 47358
308 48402
325 47358
342 48402

Proposed Rules:

225 47242
615 47829

14 CFR

21 47671
29 48609
39 ..... 46538, 46540, 46541, 46542, 46703, 46704, 47041, 47046, 47047, 47049, 47051, 47409, 47410, 47802, 47804, 47806, 47808, 47809, 47813, 48066, 48612, 48613, 48614, 48617, 48619, 48818, 48820, 48822, 449051, 49053, 49055, 49056, 49058
71 ..... 47051, 47052, 47053, 47411, 47671, 47815, 48069, 48403, 48824, 48825
97 ..... 46706, 46707, 46711, 48826, 48827
1215 46713

Proposed Rules:

25 48862
39 ..... 46572, 46574, 46576, 46742, 47459, 47462, 47829, 47831, 47834, 47835, 48431, 48433, 48435, 48437, 48439, 48441, 48864, 48866
71 ..... 46743, 46744, 47465, 47466, 48097, 48868, 48869, 48870, 48871
243 47692

15 CFR

902 47821

16 CFR

305 486200
1615 ..... 47412, 47634
1616 ..... 47412, 47634

17 CFR

200 49010
239 ..... 49010, 49011
240 48290
249 47412
270 ..... 49010, 49011
274 49010
400 48338
420 48338

Proposed Rules:

228 47706
230 47706
239 47706
240 ..... 47706, 48333
249 47706
270 49022

19 CFR

101 49058

Proposed Rules:

103 48098
123 48100

20 CFR

655 46988

21 CFR

101 48529
131 48405
136 46714
137 46714
139 46714
173 ..... 46374, 46376
177 ..... 46543, 46716
178 ..... 46544, 46545, 48623
510 46547
520 46719
522 ..... 46548, 48829
524 48624
606 47413
610 47413
801 47550
803 47550
804 47550
807 47550
820 47550
897 47550
1309 48830
1310 48830
1313 48830

Proposed Rules:

70 48102
71 48102
80 48102
101 48102
107 48102
170 48102
172 48102
173 48102
174 48102
175 48102
177 48102
178 48102
184 48102
352 48645
1250 48102
1301 49058
1308 48655

22 CFR

120 48830
123 48830
128 48803

Proposed Rules:

514 46745

24 CFR

27 48546
29 48546
91 48736
92 48736
206 49030
207 49036
247 47380
251 49036
252 49036
255 49036
572 48796
573 47404
582 48052
880 47380
882 48052
884 47380
3500 46510

Proposed Rules:

3500 46523

25 CFR

271 49059
272 49059
274 49059
277 49059
278 49059

26 CFR

1 ..... 46719, 47821, 47822
602 46719

Proposed Rules:

1 ..... 47838, 48656

27 CFR

Proposed Rules:

9 46403
178 47095

28 CFR

0 ..... 46720, 48405
524 47794
541 47794
544 ..... 47794, 47795
571 47794

29 CFR

506 46988
4044 48406

Proposed Rules:

1910 47712
1952 ..... 48443, 48446

30 CFR

203 48834
902 48835
935 46548
944 46550
946 46552

Proposed Rules:

206 48872
906 47722
917 46577
946 48110

32 CFR

619 49060
706 ..... 46378, 48070
801 46379

Proposed Rules:

318 47467
651 47839

33 CFR

100 47822
117 49064
165 ..... 47054, 47823

Proposed Rules:

165 47839
334 48112

34 CFR

668 49042

Proposed Rules:

75 47550
76 47550
77 47550
271 47550
272 47550
607 47550
642 47550
648 47550
662 47550
663 47550
664 47550
668 48564
674 48564
675 48564
676 48564
682 ..... 47398, 48564
685 48564
690 48564

35 CFR

Proposed Rules:

133 46407
135 46407

36 CFR

1 46554
7 46379
15 46554
111 48572
211 47673
223 48625
242 48625

Proposed Rules:

800 48580

37 CFR

Proposed Rules:

2 48872

38 CFR

4 46720

Proposed Rules:

16 47469

39 CFR

111 48071

40 CFR

9 48208
52 ..... 47055, 47057, 47058, 48407, 48409, 48629, 48632, 49087, 49090
63 ..... 46906, 48208
81 47058
82 47012
180 48843
261 ..... 46380, 48635
300 ..... 47060, 47825

Proposed Rules:

Ch. 1 48452
35 46748
51 47840
52 ..... 47099, 47100, 48453, 48656, 48657, 48873, 49064
59 46410
60 47840
61 ..... 47840, 49091
63 ..... 47840, 49091
64 46418
70 ..... 46418, 49091,
71 46418
81 47100
270 46748
271 46748
300 ..... 46418, 46749, 46753, 48657
437 48806
799 47853

41 CFR

Proposed Rules:

Ch. 109 48006

42 CFR

417 46384
482 47423

Proposed Rules:
418.....46579

43 CFR

4.....47434
2560.....47724, 49008
Proposed Rules:
36.....48873
2090.....47853
2110.....47853
2130.....47853
2200.....47855
2610.....47725
2780.....48454
5510.....48455
6400.....47726
8350.....47726

44 CFR

64.....46732

45 CFR

2400.....46734
Proposed Rules:
1609.....48529

46 CFR

10.....47060
12.....47060
Proposed Rules:
10.....47786

47 CFR

1 .....46557, 48874, 49103
25.....46557
51.....47284
52.....47284
68.....47434
73 .....46563, 47434, 47435, 47436, 48638, 48639
80.....46563
95.....46563, 49103
Proposed Rules:
Ch. 1.....46419
1 .....46420, 46603, 46755, 49066
22.....46420
25.....46420
73 .....46430, 46755, 47470, 47471, 47472, 48659, 48660
95.....4066

48 CFR

219.....49008
1506.....47064
1515.....47065
1534.....47064
1536.....47064
1542.....47064
1545.....47064
1552.....47064, 47065
1807.....47068
1808.....47068
1809.....47068
1810.....47068
1811.....47068
1812.....47068
1814.....47068
1828.....47068
1835.....47068
1842.....47068
1845.....47082
1852.....47068, 47082
1853.....47082
1871.....47068
Proposed Rules:
Ch. 34.....47550
1 .....47390, 48354, 48380
2.....48380
3.....47390, 48354
4 .....47390, 48354, 48532
5.....47384
6.....48354
8.....48354
9.....47390, 48354
11.....47384
12 .....47384, 47390, 48354, 48532
13.....47384, 48532
14 .....47390, 48354, 48380
15.....47390, 48380
16.....48354, 48532
19.....47390, 48354
22.....48354
23.....48354
25.....48354
27.....48354
29.....48354
31.....48354
32.....48354
33.....47390
36.....48354, 48380
37.....47390, 48354
41.....48532
42.....48354
43.....47390, 48532
45.....48354
47.....48354
49.....48354, 48532
52 .....47384, 47390, 47798, 48354, 48380, 48532
53 .....47390, 48354, 48380, 48532
203.....47100
212.....47101
215.....47100
219.....47101
225.....47101
226.....47101
227.....47101
233.....47101
252.....47100, 47101
501.....46607
504.....46607
507.....46607
510.....46607
511.....46607
512.....46607
514.....46607
515.....46607
538.....46607
539.....46607
543.....46607
546.....46607
552.....46607
570.....46607
9903.....49196

49 CFR

538.....46740
571.....47086
575.....47437, 47825
583.....46385
1002.....48639
1039.....47446
Proposed Rules:
531.....46756
571.....47728

50 CFR

17.....48412
20.....49231
32.....46390
100.....48625
285.....48413, 48640
622 .....47446, 47821, 48413, 48641, 48848
648.....47827
660 .....47089, 48072, 48643, 48852
662.....48853
679 .....46399, 46570, 47089, 48073, 48074, 48415, 49076
Proposed Rules:
17 .....46430, 46608, 47105, 47856, 48875, 48876
20.....47786
21.....46431
285.....48661, 48876
630.....48661
648 .....47106, 47472, 47473
679.....47108, 48113

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Research Service

Award of fellowships to applicants from other American republics; Federal regulatory review; CFR part removed; published 8-19-96

AGRICULTURE DEPARTMENT

Rural Housing Service

Federal regulatory review:

Congregate housing services program; published 8-19-96

DEFENSE DEPARTMENT

Army Department

Military traffic management:

Air freight forwarders; qualification standards; published 9-18-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Native American programs:

Ineligible applications; appeals procedure; published 8-19-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal regulatory review:

Congregate housing services program; published 8-19-96

Grants:

Nehemiah housing opportunity grants program; streamlining; published 8-19-96

INTERIOR DEPARTMENT

Indian Affairs Bureau

Indian Self-Determination and Education Assistance Act program:

Contracts, grants, school construction contracts, etc. elimination; Federal regulatory review; published 9-18-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Annual hunting regulations; and special youth waterfowl hunting day establishment; published 9-18-96

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Civil monetary penalty assessment against Federal employee in disciplinary action brought by Special Counsel; published 9-18-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Hamilton Standard; correction; published 9-18-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Pacific Northwest et al.; comments due by 9-23-96; published 8-23-96

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 9-27-96; published 8-28-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Mexican fruit fly; comments due by 9-23-96; published 7-24-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Administrative regulations:

Crop insurance coverage for production of agricultural commodity on highly erodible land or converted wetland (sodbuster and swampbuster provisions); comments due by 9-23-96; published 7-26-96

Crop insurance regulations:

Extra long staple cotton; comments due by 9-26-96; published 8-27-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Pathogen reduction; hazard analysis and critical control point (HAACP) systems; comments due by 9-23-96; published 7-25-96

AGRICULTURE DEPARTMENT

Export sales reporting:

Sunflowerseed and oil; comments due by 9-23-96; published 7-23-96

Freedom of Information Act and Privacy Act; implementation:

Federal regulatory review; comments due by 9-23-96; published 7-25-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Bering Sea and Aleutian Islands groundfish; comments due by 9-23-96; published 9-12-96

Summer flounder, scup, and Black Sea bass; comments due by 9-26-96; published 9-6-96

West Coast salmon; comments due by 9-27-96; published 9-12-96

West Coast States and Western Pacific fisheries--

Pacific whiting; comments due by 9-25-96; published 9-16-96

Tuna, Atlantic bluefin fisheries; comments due by 9-23-96; published 8-23-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Agency procurement protests; comments due by 9-24-96; published 7-26-96

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

Federal regulatory review; miscellaneous amendments; comments due by 9-23-96; published 8-23-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards;

Synthetic organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation; comments due by 9-25-96; published 8-26-96

Air programs; fuels and fuel additives:

Reformulated and conventional gasoline--

World Trade Organization; decision concerning baseline used to determine imported gasoline requirements; comments due by 9-26-96; published 6-28-96

Air quality implementation plans; approval and promulgation; various States:

Massachusetts; comments due by 9-26-96; published 8-27-96

Tennessee; comments due by 9-26-96; published 8-27-96

Hazardous waste:

Land Disposal Program Flexibility Act; surface impoundment study; comments due by 9-23-96; published 7-25-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acephate, etc.; comments due by 9-27-96; published 8-28-96

Solid wastes:

Hazardous waste combustors, etc.; maximum achievable control technologies performance standards

Data availability; comments due by 9-23-96; published 8-23-96

Superfumd program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 9-26-96; published 8-27-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 9-27-96; published 8-28-96

Toxic chemical release reporting; community right-to-know--

Metal mining, coal mining, etc.; industry group list additions; comments due by 9-25-96; published 8-28-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Satellite communications--

Satellite earth stations; local zoning regulations preemption; comments due by 9-27-96; published 9-3-96

Radio stations; table of assignments:

Arizona; comments due by 9-23-96; published 8-7-96

Kentucky; comments due by 9-23-96; published 8-14-96

Tennessee; comments due by 9-23-96; published 8-14-96

Texas; comments due by 9-23-96; published 8-14-96

Telecommunications Act of 1996; implementation:

Common carrier services--

Over-the-air reception devices; restrictions preemption; comments due by 9-27-96; published 9-4-96

FEDERAL DEPOSIT INSURANCE CORPORATION

Securities of nonmember insured banks; comments due by 9-26-96; published 6-28-96

FEDERAL MARITIME COMMISSION

Ocean freight forwarders, marine terminal operations, and passenger vessels:

Transportation nonperformance; coverage ceiling removal, replacement with sliding-scale coverage; comments due by 9-25-96; published 8-21-96

GENERAL ACCOUNTING OFFICE

American with Disabilities Act; implementation:

Personnel relations and services; comments due by 9-27-96; published 8-28-96

Prohibited personnel practices; comments due by 9-27-96; published 8-28-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Agency procurement protests; comments due by 9-24-96; published 7-26-96

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

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Latex-containing devices; user labeling; comments due by 9-23-96; published 6-24-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Maryland; comments due by 9-27-96; published 8-28-96

Ohio; comments due by 9-25-96; published 8-26-96

Texas; comments due by 9-27-96; published 8-28-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Educational requirements for naturalization--

Exceptions due to physical or developmental disability or mental impairment; comments due by 9-27-96; published 8-28-96

Visa waiver pilot program--

Australia; comments due by 9-27-96; published 7-29-96

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:

Cost Accounting Standards Board--

Cost accounting standards coverage; applicability; comments due by 9-27-96; published 7-29-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Agency procurement protests; comments due by 9-24-96; published 7-26-96

Contractor gratuities to government personnel; comments due by 9-24-96; published 7-26-96

Grants and cooperative agreements; uniform administrative requirements:

Institutions of higher education, hospitals, and other non-profit organizations; comments due by 9-23-96; published 7-23-96

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:

Electronic records transfer; timing and acceptable transfer media forms; comments due by 9-27-96; published 7-29-96

NUCLEAR REGULATORY COMMISSION

Domestic licensing; outdated references deleted, and minor change; comments due by 9-23-96; published 8-22-96

PANAMA CANAL COMMISSION

Shipping and navigation:

Canal tolls rates and vessel management rules--

Toll rates increase and on-deck container capacity measurement; comments due by 9-25-96; published 9-3-96

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:

Reportable events; annual report; comments due by 9-23-96; published 7-24-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospatiale; comments due by 9-27-96; published 8-19-96

British Aerospace; comments due by 9-23-96; published 8-12-96

Jetstream; comments due by 9-23-96; published 8-12-96

Airworthiness standards:

Special conditions--

Avions Marcel Dassault-Breguet Aviation Mystere-Falcon model Fan Jet Falcon (basic), etc.; comments due by 9-27-96; published 8-13-96

Licensed launch activities; financial responsibility requirements; comments due by 9-23-96; published 7-25-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Fuel economy standards:

Exemption from average fuel economy standard; alternative lower standards establishment; comments due by 9-27-96; published 7-29-96

TREASURY DEPARTMENT

Customs Service

Country of origin marking:

Frozen imported produce; comments due by 9-23-96; published 7-23-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Amortizable bond premium; comments due by 9-25-96; published 6-27-96

Bad debts modifications and dealer assignments of notional principal contracts; cross reference; comments due by 9-23-96; published 6-25-96

Consolidated return regulations--

Consolidated groups; net operating loss carryforwards and built-in losses and credits following ownership change; limitations; cross reference; comments due by 9-25-96; published 6-27-96

Losses and deductions; use limitations; cross reference; comments due by 9-25-96; published 6-27-96

Short taxable years and controlled groups; cross reference; comments due by 9-25-96; published 6-27-96

Tax-exempt bonds; arbitrage restrictions; comments due by 9-25-96; published 6-27-96

Procedure and administration:

Extensions of time to make elections; cross reference; comments due by 9-25-96; published 6-27-96

TREASURY DEPARTMENT

Thrift Supervision Office

Uniform Financial Institutions Rating System; conforming amendments; comments due by 9-23-96; published 7-23-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3269/P.L. 104–195

To amend the Impact Aid program to provide for a hold-harmless with respect to amounts for payments relating to the Federal acquisition of real property, and for other purposes. (Sept. 16, 1996; 110 Stat. 2379)

H.R. 3517/P.L. 104–196

Military Construction Appropriations Act, 1997 (Sept. 16, 1996; 110 Stat. 2385)

H.R. 3754/P.L. 104–197

Legislative Branch Appropriations Act, 1997 (Sept. 16, 1996; 110 Stat. 2394)

Last List September 11, 1996