10–18–96
Vol. 61 No. 203
Pages 54331–54532

Federal Register

Friday
October 18, 1996

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–122–AD; Amendment 39–9787; AD 96–21–10]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This amendment is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by this AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

EFFECTIVE DATE: November 22, 1996.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; 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 all Short Brothers Model SD3–60 SHERPA series airplanes was published in the Federal Register on July 12, 1996 (61 FR 36667). That action proposed to require revising the airplane flight manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices.

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 20 Short Brothers Model SD3–60 SHERPA series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, 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 $1,200, or $60 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, 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:

96–21–10 Short Brothers, PLC: Amendment 39–9787. Docket 96–NM–122–AD.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators must initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

— Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
— Accumulation of ice on the lower surface of the wing aft of the protected area.
— Accumulation of ice on the propeller spinner farther aft than normally observed.

• Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing detection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of- attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(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 3: 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) This amendment becomes effective on November 22, 1996.

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26720 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Phenylbutazone Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for use of phenylbutazone injection in dogs for relief of inflammatory conditions associated with the musculoskeletal system.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center For Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed a supplement to ANADA 200–126 which provides for intravenous use of phenylbutazone injection in dogs for relief of inflammatory conditions associated with the musculoskeletal system. The ANADA is currently approved for use of the drug in horses. The drug is limited to use by or on the order of a licensed veterinarian.

Approval of supplemental ANADA 200–126 for Phoenix's phenylbutazone injection 20 percent is as a generic copy of Cooper's NADA 11–575 Butazolidin® Injectable 20 percent (phenylbutazone). Supplemental ANADA 200–126 is approved as of September 6, 1996, and the regulations are amended by revising § 522.1720(b) (21 CFR 522.1720(b)), to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.1720 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 522.1720 Phenylbutazone injection.

* * * * *

(b) *Sponsors.* (1) Approval for use of the 200 milligrams per milliliter drug in dogs and horses: See sponsor Nos. 000031, 011716, 015579, and 059130 in § 510.600(c) of this chapter.

(2) Approval for use of the 200 milligrams per milliliter drug for use in horses: See sponsor Nos. 000010, 000402, and 000864 in § 510.600(c) of this chapter.

* * * * *

Dated: October 4, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–26685 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc. The supplemental NADA provides for intramuscular (i.m.) use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the hock joint.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, is the sponsor of NADA 140–901, which provides for use of Adequan® i.m. (500 milligrams of polysulfated glycosaminoglycan per 5 milliliters of sterile aqueous solution). The NADA provides for the intra-articular and intramuscular use of polysulfated glycosaminoglycan in horses for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal joint. The firm has filed a supplement to the NADA that provides for intramuscular use of the drug product in horses for treatment of the same conditions of the hock joint. The supplemental NADA is approved as of September 13, 1996, and the regulations are amended in 21 CFR 522.1850 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.1850 is amended by revising paragraph (c)(1) and the first sentence of paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

* * * * *

(c) *Conditions of use—horses.* (1) *Indications for use.* Polysulfated glycosaminoglycan is for the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal and hock joints in horses.

(2) *Amount*—(i) *Intra-articular use (carpal)*: 250 milligrams once a week for 5 weeks.

* * * * *

(ii) *Intramuscular use (carpal and hock)*: 500 milligrams every 4 days for 28 days. * * *

* * * * *

Dated: October 4, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–26686 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 91

[OJP No. 1099]

RIN 1121–AA41

Grants program for Indian Tribes; Correction

AGENCY: Office of Justice Programs, Justice.

ACTION: Correction to interim rule.

SUMMARY: This document provides the correct contact telephone number for Dr. Stephen Amos. The number provided for further information in the interim final rule, 28 CFR Part 91, published in the Federal Register on Wednesday, September 24, 1996 (61 FR 49969) was incorrect.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Amos, the Corrections Program Office at 1–800–848–6325.

Dated: October 9, 1996.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 96–26532 Filed 10–17–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Narcotics Traffickers, and Blocked Vessels; Removal of Entry

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Office of Foreign Assets Control is removing from appendix C to 31 CFR chapter V an entry for a vessel no longer deemed to be blocked under economic sanctions imposed against the Federal Republic of Yugoslavia (Serbia & Montenegro).

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select the appropriate self–expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.ustreas.gov/treasury/services/fac/fac.html, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or touch tone telephone.

Background

Appendix C to 31 CFR chapter V contains the names of vessels blocked pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC'') (61 FR 32936, June 26, 1996). The M/V RAMA (formerly known as the ''KUPRES'') was designated as a vessel that was the property of undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia & Montenegro) (the ''FRY (S&M)''), or of entities owned or controlled by such undertakings or entities. As such, all transactions by U.S. persons with respect to the M/V RAMA were blocked pursuant to § 585.201(b) of the Federal Republic of Yugoslavia (Serbia & Montenegro) and the Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585 (the ''Regulations''). Sanctions against the FRY (S&M) were suspended on January 16, 1996, and all transactions by U.S. persons with respect to the M/V RAMA and other FRY (S&M) vessels outside U.S. jurisdiction on this date were authorized. This rule is being issued to remove the entry ''RAMA'' from appendix C, because OFAC has determined that this vessel was sold in a judicial sale in Panama and is no longer the property of undertakings or entities organized or located in the FRY (S&M), or of entities owned or controlled by such undertakings or entities. Accordingly, transactions with regard to this vessel are not subject to the suspended prohibitions in § 585.201(b) of the Regulations.

Since the Regulations and this amendment to appendix C to 31 CFR chapter V involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; and E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930, appendix C to 31 CFR chapter V is amended as set forth below:

Appendix C to chapter V of 31 CFR is amended by removing the entry for the vessel ''RAMA''.

Dated: September 18, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 24, 1996.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 96–26810 Filed 10–17–96; 8:45 am]

BILLING CODE 4810–25–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC19

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: These regulations will implement section 1307 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This action is necessary to establish procedures for administering the statutory rights and preferences established by section 1307 for certain persons to conduct revenue-producing visitor services in certain units of the National Park System located in the State of Alaska. Particularly, this rulemaking provides guidance in the solicitation, award and renewal of Alaska visitor service authorizations in park areas.

EFFECTIVE DATE: This rule is effective November 18, 1996, except §§ 13.82–13.85 will become effective upon OMB approval of the Information Collection requirements. A document will be published in the Federal Register establishing an effective date for §§ 13.82–13.85.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Rhea, Concessions Management Analyst, Alaska System Support Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892. Phone: 907–257–2529.

SUPPLEMENTARY INFORMATION:

Background

ANILCA (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980.

Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to providing ''visitor services'' in certain lands under the administration of the Secretary of the Interior as part of the National Park System. The term ''visitor service'' is defined in section 1307 as ''any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides, excepting the guiding of sport hunting and fishing.'' Subsection (a) of section 1307 states as follows:

> Notwithstanding any other provision of law, the Secretary [of the Interior], under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service [as defined in subsection (c)] within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded (16 U.S.C. 3197).

Subsection (b) of section 1307 states as follows:

> Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in the contracting of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary—
>
> (1) shall give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;
>
> (2) shall give preference to persons whom he determines, by rule, are local residents * * * (16 U.S.C. 3197).

Subsection (b) also provides to Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is located within the Cook Inlet Region.

In general, in passing section 1307 of ANILCA, Congress recognized that the creation and expansion of Conservation System Units (CSUs) in Alaska would have an impact on historical operators, Native Corporations and local residents. Therefore, historical operators, Native Corporations and local residents were provided with preferences to benefit from the opportunity to provide desirable visitor services in the CSUs. It is the intent of these regulations to clarify and implement the preferences contained in section 1307 of ANILCA.

The National Park Service (NPS) was created by Congress in 1916 to manage the growing number of park areas. The purpose of the NPS as stated in the NPS Organic Act of August 25, 1916, is ''to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations'' (16 U.S.C. 1). Additionally, Congress has declared that the National Park System should be, ''preserved and managed for the benefit and inspiration of all the people of the United States'' (16 U.S.C. 1a–1). The NPS seeks both to preserve and to provide for the public enjoyment of significant aspects of the Nation's natural and cultural heritage.

To provide park visitors necessary and appropriate facilities and services to enjoy park areas, Congress established a concessions program in the NPS through the Concessions Policy Act of 1965 (16 U.S.C. 20). Regulations implementing the Concessions Policy Act are found in 36 CFR Part 51.

The Concessions Policy Act authorizes the Secretary of the Interior or designee to enter into concessions contracts or issue permits to qualified concessioners. The NPS may provide ''necessary and appropriate'' visitor facilities and services for the public through these contracts and permits. These services include a wide variety of commercial visitor services from backcountry guiding to hotel operations. All are provided by private corporations, partnerships, individuals or other entities under contract with the NPS. Their purpose is to provide park visitors with the services and accommodations that are necessary and appropriate for the enjoyment of America's national parks. The NPS determines what is necessary and appropriate through its planning process. Visitor needs vary with the purposes of the various park areas and the circumstances at the time of contracting. As applicable, the Concessions Policy Act grants a preference in renewal of concession authorizations to those concessioners who have performed contractual obligations to the satisfaction of the Secretary. In addition, the NPS authorizes certain categories of visitor services through incidental business permits. Holders of the permits do not obtain any preference in renewal. These regulations describe the relationship between section 1307 provisions and NPS concession permits, contracts and incidental business permits.

Summary of Public Comments

The proposed rule, which was published in the Federal Register on April 25, 1995 (60 FR 20374), afforded the public an initial comment period of 60 days from April 25 to June 26, 1995. In response to numerous requests, the comment period was reopened an additional 60 days from July 13 to September 11, 1995. The U.S. Fish and Wildlife Service (FWS) simultaneously published similar proposed rules implementing section 1307. Joint public meetings were held in Anchorage and Fairbanks by the NPS and the FWS. The NPS also held meetings in Gustavus, Juneau and Yakutat. All written and all oral comments received were shared between the NPS and the FWS. The NPS received 46 written comments. The FWS received 28 comments, 20 which duplicated comments sent to the NPS. Of the 46 written comments received by the NPS, 4 were from individuals, 14 were from Native corporations or Native villages, 19 were from concessioners or permittees, 4 were from special interest groups, 1 was from State Government, 2 were from the Federal Government and 2 were from other businesses. After considering all public comments, the NPS has decided to revise the proposed rule and to proceed with the final rule. The following analysis applies only to those comments that related to the NPS proposed rule and are discussed on a section-by-section basis.

Analysis of Public Comments

General Comments

There were a number of general comments. Some comments questioned the relationship between Native corporations and the Indian Self-Determination Act. The Indian Self-Determination Act does not apply to the provision of visitor services on Federal lands. One commenter suggested that Glacier Bay vessels should be excluded from section 1307. However, the law only excludes sport fishing and hunting. There were comments about the relationship between section 1307 and the Concessions Policy Act and the impact of section 1307 on existing satisfactory concessioners. These relationships are described in the final regulations. A number of commenters objected to the rule being applied retroactively to January 1, 1979, with criteria that were previously unknown to operators. However, the NPS cannot alter the effective date of section 1307 and believes that the provisions of these regulations, to the extent they may be considered retroactive, are required by ANILCA and, in any event, otherwise are fair in light of NPS administration of

section 1307 since its enactment. This issue is discussed further below in connection with transfers in controlling interests of historical operators.

The NPS considers that the preferences established in section 1307 take precedence over the preferential right of renewal granted NPS concessioners by 16 U.S.C. 20 *et seq.* With respect to revenue producing visitor services, section 1307 takes precedence over all other laws, including those for awarding or renewing concessions contracts or annual funding agreements under the Tribal Self-Governance Act. Several commenters expressed concerns that giving preferences does not always allow the selection of the best qualified provider and that entities without a preference may be discouraged from submitting proposals to provide visitor services. The NPS, in drafting these regulations, has taken into account the objectives of quality service and competition, as well as the legal rights provided by section 1307.

In addition to the specific changes discussed section-by-section, the NPS has made a number of editorial changes to the text of the proposed regulations for the purposes of clarity and consistency.

Section 13.80 Applicability and Scope

A new sentence has been added to § 13.80(b) to clarify that, although section 1307 gives preferences in the issuance of visitor services authorizations, it does not require that such authorizations be issued except as otherwise mandated by statute. For example, even after the selection of a visitor service authorization has been made, the NPS may determine that the authorization is inappropriate for resource protection or other reasons, in which case it may choose not to execute the authorization. Likewise, the NPS retains the authority to terminate executed authorizations under their terms. In this same connection, a sentence has been added that clarifies that nothing in this subpart requires the NPS to issue a visitor services authorization to a person who is not capable of carrying out the terms and conditions of the authorization in a satisfactory manner. Finally, a new paragraph (c) has been added to state that, as set forth in section 1307, these regulations do not apply to the guiding of sport hunting or fishing.

Section 13.81 Definitions

Section 13.81 provides a number of definitions for terms used in the regulations. A definition of ''best offer'' has been included for clarity. The definition of ''similar visitor services'' has been deleted since the term is explained in the body of the regulations. The term ''persons'', as used in these regulations, is defined in 36 CFR 1.4.

Some comments were objections that it would be unfair to apply several of the definitions without basis in law. In response to the comments, some definitions were changed. One commenter stated that the definition of controlling interest should be ''actual exercise'' of management authority. The definition was not changed as the NPS believes it properly implements the intentions of section 1307 with respect to the complex issue of degrees of involvement in a business sufficient to warrant recognition of the rights provided by section 1307.

In response to comments, the continuity of service criteria was dropped in the definition of historical operator. Continuity of service requirements are discussed in the main body of the regulations. In addition, a phrase has been added to the definition of historical operator to explain that a statute besides ANILCA may declare a person to be a historical operator (as is the case with respect to one Glacier Bay National Park cruise ship concessioner). Finally, the definition has been modified to explain that historical operators are to conduct their activities pursuant to a valid visitor services authorization.

A number of commenters objected to the definition of local area and thought that the size of a community should have no bearing on the definition of local. Some comments opposed the 35-mile straight-line boundary since it would exclude some communities that have historic ties to certain park areas. Due to the size of the park areas, the NPS also recognized that under the proposed definition, a local resident could be far removed from the geographic area of the area of a park where a service is to be provided.

Consequently, the definition of local area has been changed to an area within 100 miles of the location within the park area where the service is authorized to be provided, and the community population limit was dropped. Depending upon the service, the local area may include the entire park area or a portion of the park area. The 100-mile radius is consistent with Tier 2 of the recommendations of the Alaska Land Use Council for defining local resident.

The definitions under local resident were rewritten for clarity. In response to a comment asking for time restrictions to qualify an individual as a local resident, a criterion was added that an individual must have lived within the local area a minimum of 12 consecutive months. This prohibits an individual from moving into a local area and immediately qualifying as a local resident.

Some commenters objected to the definition of local corporation that required both the corporate headquarters to be located in the local area and a majority of shareholders to qualify individually as local residents. The definition of local corporation was changed to a corporation in which the controlling interest is owned by individual local residents. In addition, the definition has been clarified to state, with respect to non-profit corporations, that in order to be considered local, a majority of its board members and officers must qualify as local residents. This definition maintains the statutory intent of providing a preference to persons who have a strong presence in the local community.

The definition of preferred operator was reworded to more closely track statutory language. For clarification, the definition of responsive offer was added using the definition at 36 CFR 51.5(c). The definition of similar services was deleted as being unnecessary, as the term is defined in the body of the regulations. A new definition, visitor services authorization, has been added for clarity to encompass in one term all types of instruments the NPS may use to authorize visitor services.

Section 13.82 Historical Operators

These provisions implement subsection (a) of section 1307 and permit persons who were adequately providing visitor services in applicable areas in Alaska prior to January 1, 1979, to continue to do so under reasonable terms and conditions. Such persons are referred to as ''historical operators.'' The paragraphs in this section were rearranged for clarity.

Section 13.82 explains that the existence of a right to continue to provide visitor services under subsection 1307(a) is not an unlimited right. The right is subordinate to the management of the park area and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities. A historical operator, however, may be authorized to provide services similar to those provided before January 1, 1979, if acceptable to the NPS as consistent with the purposes of the park and provided that the similar services are not in excess of those provided by the concessioner as of January 1, 1979. In addition, the rights of a historical operator are considered terminated

upon a change in the controlling interest in the historical operator. This provision is intended to implement the ''grandfather clause'' purposes of section 1307(a) while not permitting the sale or transfer of these ''grandfather rights'' to third parties consistent with the intentions of section 1307.

Persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a park area in Alaska, who have continued to provide that visitor service and who have retained controlling interest in the business are considered historical operators under these regulations.

Some commenters objected to the requirement that the rights of historical operators would terminate if there was a break in service of more than 11 consecutive months since there could be a number of legitimate reasons why the business could not operate for one season. This requirement was changed to a break in service of no more than 24 consecutive months. This will allow an operator to miss one season of operation without jeopardizing the permit or contract unless the terms of the permit or contract require the service to be provided.

Several commenters expressed concerns about the loss of historic rights if there has been a change in controlling interest since January 1, 1979. There were concerns about transferring a permit to a surviving spouse, to another partner, the impact of incorporating and bringing in additional stockholders and the impact of selling a corporation to a different parent corporation removed from the daily operation of the business.

In response, with respect to individual historic operators, a new provision has been added to § 13.82(e) that if a change in a controlling interest only results in the acquisition of the controlling interest by individuals who were personally engaged in that visitor service activity before January 1, 1979, historical operator rights will continue to be recognized. For example, an individual (qualified as an historical operator) holding a visitor services authorization may transfer a controlling interest in the business to a spouse, child or informal partner, if the transferee was personally engaged in the conduct of the historical operator's business before January 1, 1979.

The rules have not been changed with respect to corporations. The intention of the regulations in this regard, consistent with NPS' understanding of the intentions of section 1307, is to treat corporations in a similar manner as individuals, with respect to the consequences of a change in ownership. To do otherwise would result in an anomaly. That is, the historical rights of individuals would necessarily lapse as a matter of law upon the individual's death or sale of the business under the terms of section 1307, while a corporate historical operator would retain the statutory right forever, as long as the corporate entity remained in existence, even though the actual ownership of the corporation passes to persons who had no involvement in the business before January 1, 1979. These regulations, consistent with the intentions of section 1307 and in the interests of fairness, provide individuals who provided visitor services prior to January 1, 1979, the same rights to continue those services regardless of whether the form of business was a sole proprietorship, partnership or corporation. Section 1307 was intended to ''grandfather'' persons who were engaged in providing visitor services before January 1, 1979, so as not to arbitrarily close businesses as a result of the passage of ANILCA. However, the statute, consistent with its intentions, does not provide for the sale or transfer of the statutory rights it creates.

Commenters expressed concerns about applying the controlling interest requirement retroactively to January 1, 1979. This date, however, is clearly stated in section 1307, and the NPS has advised interested persons of these requirements in the administration of visitor services authorizations since the passage of ANILCA.

Also in response to comments, a new provision has been added which says historical operators may apply for a visitor services authorization in a joint venture with other persons, but that historical operating rights will only be recognized if the historical operator has the controlling interest in the joint venture. This provision allows business flexibility without compromising the statutory intention of section 1307.

Section 13.83 Preferred Operators

This section implements subsection (b) of section 1307 (except with respect to CIRI) and grants a preference (generally defined for the purpose of these regulations as a right to meet the terms of the best offer received by the NPS in a public solicitation process for visitor services) to certain individuals and corporations to provide visitor services in Alaska park areas. The section has been modified to clarify that it takes effect only when there is a competitive award of a visitor services authorization.

Section 13.83 of the regulations applies to the two categories of persons to be given a preference pursuant to section 1307(b) of ANILCA, collectively referred to as preferred operators. The first category of preferred operator is the Native corporation determined by the Director to be most directly affected by the establishment or expansion of a park area.

The second category of preferred operator consists of persons who are determined by the Director to be local residents of any park area, whether or not it existed before ANILCA. A local resident as defined in these regulations means a person living within 100 straight-line miles of the location within a park area where the service is to be provided.

Section 13.83 establishes a procedure for the solicitation and award of visitor service authorizations that incorporates the rights of preferred operators under section 1307(b). In order to exercise the preference, a preferred operator must submit a responsive offer under the terms of a public solicitation. Some commenters said it was unfair to allow *all* preferred operators the opportunity to match the better offer and that the rule as written would discourage everyone except preferred operators from submitting proposals. In response to those concerns, the regulation has been amended to explain that if, after all the responsive offers are reviewed, a preferred operator has submitted an offer that is substantially equal to or better than any other offer, the preferred operator will be awarded the contract or permit. In addition, redundant express requirements regarding capability have been deleted from this section.

It was apparent from the public comments that there was some confusion about the relationship between the two categories of preferred operators. Local residents and most directly affected Native corporations have equal preference in the award of a visitor service authorization. A statement to this effect was added to 13.83(c).

As with historical operators, the NPS does not believe section 1307(b) intended to provide preferred operators with an exclusive right to provide visitor services. Section 13.83 permits other persons to provide visitor services in park areas in a manner consistent with the preference of preferred operators. Accordingly, public solicitations for section 13.83 purposes will generally be the public solicitation used for general concession authorizations under 36 CFR Part 51.

Section 13.83 (b) was changed to read that an amended offer from a preferred operator must substantially equal the terms of the best offer rather than meet

the terms of the best offer. This change is consistent with 36 CFR Part 51.

Some commenters questioned why a Native corporation was required to submit additional information in Section 13.83(d) that was not required of local corporations. This was not the intention of the proposed rule. Section 13.83(d) was rewritten to require that Native corporations and local corporations both must document their controlling interest in the joint venture making the offer to provide a commercial service. This change addresses the concerns of commenters who where opposed to allowing a preferred operator to serve as a front for another business entity.

Finally, paragraph (d) has been amended, in response to comments, to allow a preferred operator to submit an offer in the form of a joint venture, as long as the preferred operator has a controlling interest in the joint venture. This provides appropriate business flexibility without compromising the intentions of section 1307.

Section 13.84 Preference to Cook Inlet Region, Incorporated

This section describes the right of first refusal granted by section 1307(b) to Cook Inlet Region, Incorporated (CIRI) to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet Region. A number of changes were made in response to comments received from CIRI. The comma before ''when appropriate'' was deleted to be consistent with section 1307. The regulation was modified to state that the NPS is to solicit competitive offers as the first step in the possible exercise of CIRI's right of first refusal. The 90-day deadline for CIRI to make a responsive offer, as specified in section 1307, was added. The requirement to document total ownership in the business entity making the offer was changed to documentation of controlling interest by CIRI, in cooperation with village corporations within the Cook Inlet Region when appropriate. The requirement to document controlling interest is consistent with § 13.83(d) as rewritten. Kijik Corporation expressed concerns about this section since they have land within the same region. This section of the rule was written to match the language in section 1307 as closely as possible.

Section 13.85 Most Directly Affected Native Corporation Determination

This section establishes procedures and criteria for determining which Native corporation was most directly affected by the establishment or expansion of a park area and accordingly is a preferred operator with respect to that park area. Each Native corporation has the opportunity to be considered for a determination of ''most directly affected.'' The Director's ''most directly affected'' Native corporation decision or appeal decision is applicable for all future visitor services for that park or preserve. However, a new sentence has been added to § 13.85 to permit Native corporations that did not apply for ''most affected'' status at earlier opportunities to apply for ''equally affected'' Native corporation status in connection with subsequent visitor services authorizations.

The word ''new'' in 13.85(a) was deleted. This rule applies to all visitor services in park areas, not just to new services. Several comments received from Native corporations objected to some of the criteria used to determine most directly affected. This section lists criteria considered, but is not all-inclusive. Nor are the criteria listed in priority order. The NPS wants to afford the opportunity for Native corporations and Native villages to provide information pertinent to making this determination. Under the application section, a provision was added to allow a Native corporation the opportunity to submit any information it considers relevant in making the ''most directly affected'' determination. Under the socioeconomic impacts criteria, consideration for historic and traditional uses of park areas and land-use patterns by Native corporations was added.

Some commenters objected to the criteria concerning ownership of land. It is not necessary for a Native corporation to own surface acres within and adjoining a Conservation System Unit in order to qualify as ''most directly affected.'' Land ownership is one of several criteria used in making the determination. The regulation has been modified in this regard, and, has been modified to explain that in making such determinations, the NPS may take into account other information considered relevant and require an applicant to submit additional information when appropriate. It is the intention of the NPS to use a public process to make these determinations.

Section 13.86 Appeal Procedures

This section establishes procedures and criteria under which people who believe they have not been provided section 1307 rights under this subpart may appeal to the Director for a final administrative determination in this regard. In response to comments, and in accordance with policy, this section was changed to allow an appeal to be made to the next higher level of authority in the NPS which is the Director.

Paperwork Reduction Act

The collections of information contained in §§ 13.82–13.85 of this rule are for the purposes of preparing offers in response to contract solicitations pursuant to 36 CFR Part 51, and have previously been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0125. This approval expired in January 1996. However, OMB has given emergency approval to the NPS for the collection of information under the same authorization number for the basic contracting program for a limited period of time. The NPS has submitted the necessary documentation to OMB requesting 3 year approval for the collection of information for all areas covered by this rule. A document will be published in the Federal Register establishing an effective date for §§ 13.82–13.85 when that approval is received from OMB.

The NPS is advertising the availability of concession opportunities within park areas, requiring that parties interested in being awarded a concession contract submit offers to provide the necessary facilities and services. The public reporting burden for the collection of information in this instance is estimated to be 480 hours for large operations and 240 hours for small operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. The request for the collection of information contained in these sections has been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* for approval. The collection of this information will not be required until it has been approved by OMB.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20013; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. It was determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local and negligible.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments, or private entities.

The Regulatory Flexibility Act further requires the preparation of flexibility analysis for rules that will significantly affect a substantial number of small entities including small businesses, organizations, or governmental jurisdictions. Local visitor service providers, exercising their right under Section 1307(b) of ANILCA, will benefit more than companies without the preference. This preference will have a positive impact on the local areas by increasing the economic base of these communities. This impact, while important in relation to the total economic level of the local area, is very small in actual dollar value. Therefore, this rule would have no ''significant'' economic impact on the local communities or local governmental entities. The NPS has determined that this rulemaking will not significantly affect the quality of human environmental health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships of land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an environmental assessment (EA) nor an environmental impact statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.;* § 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197.

2. Section 13.2 is amended by redesignating paragraph (e) as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 13.2 Applicability and scope.

* * * * *

(e) Subpart D of this part 13 contains regulations applicable to authorized visitor service providers operating within certain park areas. The regulations in subpart D of this part amend in part the general regulations contained in this chapter.

* * * * *

3. In part 13, a new Subpart D is added to read as follows:

Subpart D—Special Visitor Services Regulations

Sec.

13.80 Applicability and scope.
13.81 Definitions.
13.82 Historical operators.
13.83 Preferred operators.
13.84 Preference to Cook Inlet Region, Incorporated.
13.85 Most directly affected Native Corporation.
13.86 Appeal procedures.
13.87 Information collection.

Subpart D—Special Visitor Services Regulations

§ 13.80 Applicability and scope.

(a) Except as otherwise provided for in this section, the regulations contained in this part apply to visitor services provided within all national park areas in Alaska.

(b) The rights granted by this subpart to historical operators, preferred operators, and Cook Inlet Region, Incorporated are not exclusive. The Director may authorize other persons to provide visitor services on park lands. Nothing in this subpart shall require the Director to issue a visitor services authorization if not otherwise mandated by statute to do so. Nothing in this subpart shall authorize the Director to issue a visitor services authorization to a person who is not capable of carrying out its terms and conditions in a satisfactory manner.

(c) This subpart does not apply to the guiding of sport hunting or sport fishing.

§ 13.81 Definitions.

The following definitions apply to this subpart:

(a) *Best offer* means a responsive offer that best meets, as determined by the Director, the selection criteria contained in a competitive solicitation for a visitor services authorization.

(b) *Controlling interest* means, in the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. *Controlling interest* in the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, means a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, *controlling interest* means any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

(c) *Director* means the Director of the National Park Service or an authorized representative.

(d) *Historical operator,* except as otherwise may be specified by a statute other than ANILCA, means the holder of a valid written authorization from the Director to provide visitor services within a park area that:

(1) On or before January 1, 1979, was lawfully engaged in adequately providing such visitor services in the applicable park area;

(2) Has continued, as further defined in § 13.82, to lawfully provide that visitor service since January 1, 1979, without a change in controlling interest; and

(3) Is otherwise determined by the Director to have a right to continue to provide such services or similar services pursuant to § 13.82.

(e) *Local area* means an area in Alaska within 100 miles of the location within the park area where any of the applicable visitor services is authorized to be provided.

(f) *Local resident* means:

(1) *For individuals.* Those individuals who have lived within the local area for 12 consecutive months before issuance of a solicitation of offers for a visitor services authorization for a park area and who maintain their primary, permanent residence and business within the local area and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating

the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns and voter registration.

(2) *For corporations.* A corporation in which the controlling interest is held by an individual or individuals who qualify as *local resident(s)* within the meaning of this subpart. For non-profit corporations a majority of the board members and a majority of the officers must qualify individually as local residents.

(g) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(h) *Preferred operator* means a Native Corporation that is determined under § 13.85 to be ''most directly affected'' by the establishment or expansion of a park area by ANILCA, or a local resident as defined in this subpart.

(i) *Responsive offer* is one that is timely received and meets the terms and conditions of a solicitation for a visitor services authorization.

(j) *Visitor services authorization* is a written authorization from the Director to provide visitor services in a park area. Such authorization may be in the form of a concession permit, concession contract, or other document issued by the Director under National Park Service policies and procedures.

§ 13.82 Historical operators.

(a) A historical operator will have a right to continue to provide visitor services in a park area under appropriate terms and conditions contained in a visitor services authorization issued by the Director as long as such services are determined by the Director to be consistent with the purposes for which the park area was established. A historical operator may not operate without such an authorization. The authorization will be for a fixed term. Failure to comply with the terms and conditions of the authorization will result in cancellation of the authorization and consequent loss of historical operator rights under this subpart.

(b) Nothing in this subpart will prohibit the Director from permitting persons in addition to historical operators to provide visitor services in park areas at the Director's discretion as long as historical operators are permitted to conduct a scope and level of visitor services equal to those provided before January 1, 1979, under terms and conditions consistent with this subpart. A historical operator may be permitted by the Director under separate authority to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights will be obtained in such increase.

(c) If a historical operator applies for a visitor services authorization in the form of a joint venture, the application will not be considered as validly made unless the historical operator demonstrates, to the satisfaction of the Director, that it has the controlling interest in the joint venture.

(d) A historical operator may apply to the Director for an authorization or amended authorization to provide visitor services similar to those it provided before January 1, 1979. The Director will grant the request if such visitor services are determined by the Director to be:

(1) Consistent with the protection of park resources and the purposes for which the park area was established;

(2) Similar in kind and scope to the visitor services provided by the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(e) When a historical operator's visitor services authorization expires, and if the applicable visitor services continue to be consistent with the purposes for which the park area was established as determined by the Director, the Director will offer to renew the authorization for a fixed term under such new terms and conditions as the Director determines are in the public interest.

(f) If the Director determines that authorized visitor services must be curtailed or reduced in scope, level, or season to protect park resources, or for other purposes, the Director will require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Director will establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Director will select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(g) Any of the following will result in loss of historical operator status:

(1) Revocation of an authorization for historic types and levels of visitor services for failure to comply with the terms and conditions of the authorization.

(2) A historical operator's declination of a renewal of the authorization made pursuant to paragraph (d) of this section.

(3) A change in the controlling interest of the historical operator through sale, assignment, devise, transfer, or by any other means, direct or indirect. A change in the controlling interest of a historical operator that results only in the acquisition of the controlling interest by an individual or individuals who were personally engaged in the visitor services activities of the historical operator before January 1, 1979, will not be deemed a change in the historical operator's controlling interest for the purposes of this subpart.

(4) A historical operator's failure to provide the authorized services for more than 24 consecutive months.

(h) The Director may authorize other persons to provide visitor services in a park area in addition to historical operators.

§ 13.83 Preferred operators.

(a) In selecting persons to provide visitor services for a park area, the Director will, if the number of visitor services authorizations is to be limited, give a preference (subject to any rights of historical operators or CIRI under this subpart) to preferred operators determined qualified to provide such visitor services.

(b) In such circumstances, the Director will publicly solicit competitive offers for persons to apply for a visitor services authorization, or the renewal of such an authorization, to provide such visitor services pursuant to 36 CFR part 51 and/or other National Park Service procedures. All offerors, including preferred operators, must submit a responsive offer to the solicitation in order to be considered for the authorization. If the best offer from a preferred operator is at least substantially equal to the best offer from a non-preferred operator, the preferred operator will receive authorization. If an offer from a person besides a preferred operator is determined to be the best offer (and no preferred operator submits a responsive offer that is substantially equal to it), the preferred operator who submitted the best offer from among the offers submitted by preferred operators will be given the opportunity, by amending its offer, to meet the terms and conditions of the best offer received. If the amended offer of such a preferred operator is considered by the Director as at least substantially equal to the best offer, the preferred operator will receive the visitor service authorization.

If a preferred operator does not amend its offer to meet the terms and conditions of the best offer, the Director will issue the authorization to the person who submitted the best offer in response to the solicitation.

(c) The Native Corporation(s) determined to be ''most directly affected'' under this subpart and local residents have equal preference. The rights of preferred operators under this section take precedence over the right of preference that may be granted to existing satisfactory National Park Service concessioners pursuant to the Concessions Policy Act (16 U.S.C. 20) and its implementing regulations and procedures, but do not take precedence over the rights of historical operators or CIRI as described in this subpart.

(d) An offer from a preferred operator under this subpart, if the offer is in the form of a joint venture, will not be considered valid unless it documents to the satisfaction of the Director that the preferred operator holds the controlling interest in the joint venture.

(e) Nothing in this subpart will prohibit the Director from authorizing persons besides preferred operators to provide visitor services in park areas as long as the procedures described in this section have been followed. Preferred operators are not entitled by this section to provide all visitor services in a park area.

(f) The preferences described in this section may not be sold, assigned, transferred or devised, directly or indirectly.

§ 13.84 Preference to Cook Inlet Region, Incorporated.

(a) The Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet region when appropriate, will have a right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is within the boundaries of the Cook Inlet region. In order to exercise this right of first refusal, the National Park Service will publicly solicit competitive offers for the visitor services authorization pursuant to 36 CFR part 51 or other applicable National Park Service procedures. CIRI must submit a responsive offer within 90 days of such solicitation. If CIRI makes such an offer and is determined by the Director to be capable of carrying out the terms and conditions of the visitor services authorization, it will receive the authorization. If it does not, the authorization may be awarded to another person pursuant to usual National Park Service policies and procedures if otherwise appropriate.

(b) The CIRI right of first refusal will have precedence over the rights of preferred operators. An offer from CIRI under this section, if the offer is in the form of a joint venture, will not be considered valid unless it demonstrates to the satisfaction of the Director that CIRI has a controlling interest in the joint venture.

(c) The CIRI right of first refusal may not be sold, transferred, devised or assigned, directly or indirectly.

§ 13.85 Most directly affected Native Corporation.

(a) Before the award of the first visitor service authorization in a park area to be made after the effective date of this subpart, the Director will provide an opportunity for any Native Corporation interested in providing visitor services within the applicable park area to submit an application to the superintendent to be determined the Native Corporation most directly affected by the establishment or expansion of the park area by or under the provisions of ANILCA. An application from an interested Native Corporation will include the following information:

(1) Name, address, and phone number of the Native Corporation; date of incorporation; its articles of incorporation and structure;

(2) Location of the corporation's population center or centers; and

(3) An assessment of the socioeconomic impacts, including historical and traditional use and land-ownership patterns and their effects on the Native Corporation as a result of the expansion or establishment of the applicable park area by ANILCA.

(4) Any additional information the Native Corporation considers relevant or the Director may reasonably require.

(b) Upon receipt of all applications from interested Native Corporations, the Director will determine the ''most directly affected'' Native Corporation considering the following factors:

(1) Distance and accessibility from the corporation's population center and/or business address to the applicable park area; and

(2) Socioeconomic impacts, including historical and traditional use and landownership patterns, on Native Corporations and their effects as a result of the expansion or establishment of the applicable park area; and

(3) Information provided by Native Corporations and other information considered relevant by the Director to the particular facts and circumstances of the effects of the establishment or expansion of the applicable park area.

(c) In the event that more than one Native Corporation is determined to be equally affected within the meaning of this section, each such Native Corporation will be considered as a preferred operator under this subpart.

(d) The Director's most directly affected Native Corporation determination applies to the award of all future visitor service authorizations for the applicable park area. However, a Native Corporation that did not apply for this determination in connection with an earlier visitor services authorization may apply for a determination that it is an equally affected Native Corporation for the applicable park area in connection with a later visitor services authorization. Such subsequent applications must contain the information required by paragraph (a) of this section, and must be made in a timely manner as described by the Director in the applicable solicitation document so as not to delay the consideration of offers for the visitor services authorization.

§ 13.86 Appeal procedures.

An appeal of the denial of rights with respect to providing visitor services under this subpart may be made to the next higher level of authority. Such an appeal must be submitted in writing within 30 days of receipt of the denial. Appeals must set forth the facts and circumstances that the appellant believes support the appeal. The appellant may request an informal meeting to discuss the appeal with the National Park Service. After consideration of the materials submitted by the appellant and the National Park Service record of the matter, and meeting with the appellant if so requested, the Director will affirm, reverse, or modify the denial appealed and will set forth in writing the basis of the decision. A copy of the decision will be forwarded to the appellant and will constitute the final administrative decision in the matter. No person will be considered to have exhausted administrative remedies with respect to a denial of rights to provide visitor services under this subpart until a final administrative decision has been made pursuant to this section.

§ 13.87 Information collection.

(a) The information collection requirements contained in this part have received emergency approval from the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, for the basic contracting program under OMB clearance number 1024–0125. The information is being collected as part of the process of reviewing the procedures

and programs of State and local governments participating in the national historic preservation program. The information will be used to evaluate those procedures and programs. The obligation to respond is required to obtain a benefit.

(b) The public reporting burden for the collection of information is estimated to be 480 hours for large operations and 240 hours for small operations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20013; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1024–0125), Washington, D.C. 20503.

Dated: July 10, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–26279 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5628–9]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule preamble correction.

SUMMARY: This document corrects two errors in the preamble to the national emission standards for hazardous air pollutant emissions from Group IV polymers and resins published in the Federal Register on September 12, 1996 (61 FR 48208).

EFFECTIVE DATE: This action is effective September 12, 1996.

FOR FURTHER INFORMATION CONTACT: For further information about this correction document contact Mr. Robert Rosensteel, (919) 541–5608, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: This document makes two corrections to the preamble to the National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins published in the Federal Register on September 12, 1996 (61 FR 48208). First, we are correcting a discrepancy between the paper and electronic versions of the preamble sent to the Office of the Federal Register. In making this first change we are also altering the preamble language for the Group IV Polymers and Resins final rule to make the language consistent with the language contained in the preamble for the Group I Polymers and Resins final rule (61 FR 16093). Neither of these changes represent any change to EPA policy. Second, the published version of the preamble did not contain corrections to the Paperwork Reduction Act (PRA) section (i.e., VI., C.) to reflect approval of the Information Collection Request by the Office of Management and Budget (OMB); approval of the Information Collection Request was received just prior to publication of the final rule. There are no changes required to the regulatory text because the carcinogenicity of certain hazardous air pollutants is not discussed in the regulatory text and the regulatory text correctly reflects OMB approval of the Information Collection Request.

Dated: September 26, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

The following corrections are being made in the preamble for: National Emission Standards for Hazardous Air Pollutant Emissions from Group IV Polymers and Resins published in the Federal Register on September 12, 1996 (61 FR 48208):

1. The fifth paragraph of Section II. Summary of Considerations Made in Developing These Standards, A. Purpose of Standards is corrected to read as follows:

II. * * *

A. * * *

* * * In regard to carcinogenicity, some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure.

This same paragraph previously read as follows:

* * * In regard to carcinogenicity, some of the organic HAP controlled under these standards are either probable (i.e., acetaldehyde, dioxane, acrylonitrile, and butadiene) or possible (i.e., styrene) human carcinogens.

2. Paragraph C. Paperwork Reduction Act of Section VI. Administrative Requirements is being corrected to reflect approval of the Information Collection Request. This paragraph previously portrayed the Information Collection Request as not being approved and requested comments regarding the recordkeeping and reporting burden. The corrected text is as follows:

C. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this standard under the provisions of the PRA [44 U.S.C. 3501 *et seq.*] and has assigned OMB control number 2060–0351.

The EPA is authorized by the Clean Air Act to collect information required to ensure compliance with NESHAP. Data obtained from the semiannual Periodic Reports and any other periodic reports and data obtained during visits by EPA personnel from records maintained by the respondents will be tabulated and published for internal EPA use in compliance and enforcement programs. Information contained in the Notification of Compliance Status will be entered into the Aerometric Information Retrieval Systems Facility Subsystem maintained and operated by the EPA's Office of Air Quality Planning and Standards.

This collection of information has an estimated annual recordkeeping and reporting burden of 4,000 hours per respondent. These estimates include time for all the aspects of burden as defined in the 1995 PRA and presented below. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust existing ways of complying with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In addition to hours burden associated with the collection of information, the 1995 PRA requires the EPA to estimate the total annual cost burden resulting from the collection of information, exclusive of the hours burden. The 1995 PRA indicates that this cost should include capital costs, as well as operation and maintenance costs, associated with preparations for collecting information; monitoring,

sampling, and testing equipment; and record storage facilities. However, these costs should not include equipment or services purchased (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices. The 1995 PRA also provides for the solicitation of information required to develop these costs through multiple Federal Register notices. However, the time period available to develop these costs was not sufficient to allow the EPA to solicit the information required. In the absence of actual data, the EPA has judged it is reasonable to consider that these costs are negligible and has indicated this on the OMB Form 83–I with zeros. While there may be some respondents that experience costs, because the emissions from this industry are already fairly well-controlled, the EPA judges that most respondents will already have the required equipment (capital cost), and will have already been incurring the operation and maintenance costs.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending 40 CFR Part 9, Section 9.1, to indicate the information collection requirements contained in these final standards.

[FR Doc. 96–26814 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5634–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Marathon Battery Company site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Marathon Battery Company site from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that all appropriate Hazardous Substance Response Trust Fund (Fund)-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New York have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 18, 1996.

ADDRESSES: *For further information contact:* Pamela Tames, P.E., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, NY 10007–1866, (212) 637–4255

FOR FURTHER INFORMATION CONTACT: Pamela Tames at (212) 637–4255.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Marathon Battery Company site, Cold Spring, New York.

The closing date for comments on the Notice of Intent to Delete was June 10, 1996. EPA received five comment letters.

One commenter expressed concern about the discrepancies between the Agency for Toxic Substances and Disease Registry's (ATSDR's) 20 milligram/kilogram (mg/kg) cadmium cleanup level for residential soils and the New York State Department of Health's (NYSDOH's) 10 mg/kg cadmium cleanup level. In response, it was explained that the 20 mg/kg cleanup level for cadmium in residential soils was based upon the results of a risk assessment performed by ATSDR, which made certain assumptions regarding the quantity of vegetables grown in the cadmium-contaminated residential soils and subsequently ingested by the residents. Using different assumptions, NYSDOH concluded that 10 mg/kg was protective of public health. While EPA and New York State did not agree on a residential soil remediation cleanup level, New York State agreed to remediate all contaminated residential soils between NYSDOH's 10 mg/kg cadmium cleanup level and ATSDR's 20 mg/kg cadmium cleanup level.

Several commenters expressed concern that post-excavation soil samples were not collected by New York State's contractors. In response, it was indicated that six inches of soil were removed from the entire front and back yards (cadmium contamination in the residential yards did not exist below 6 inches) if contamination was found above the State's cleanup level of 10 mg/kg. In those areas where the residents indicated that they intended to plant vegetables, 12 inches of soil was removed. Since soils in those areas that had cadmium contamination exceeding the cleanup level have been removed and replaced with clean soil and fresh sod, confirmatory sampling was not deemed necessary.

A commenter expressed concern about the presence of cadmium contamination twenty-two feet beneath the surface on the former battery facility grounds. This contamination resulted from a tank located adjacent to the former battery facility which had leaked cadmium nitrate, thereby contaminating the underlying soil. In response, it was noted that, while post-excavation sampling in one area of the site showed that some cadmium contamination remained in the saturated soils, it is believed that by placing two feet of limestone at the bottom of the twenty-by sixty-foot excavation (to keep the cadmium insoluble) and backfilling the twenty foot deep excavation will be protective of public health and the environment and should in no way impact the ability to redevelop the former battery plant grounds.

A commenter expressed concern regarding the retention of the temporary haul road's guardrail and the construction of a barrier at the intersection of the temporary haul road and Chestnut Street, in that these improvements are inconsistent with zoning and Planning Board regulations. In response, it was explained that EPA's approved engineering design called for scarifying the temporary haul road (which was constructed to alleviate truck traffic on the Village's narrow roadways during the remediation of the site), planting grass, and installing a barrier to eliminate access from Chestnut Street. While the haul road was rendered nonfunctional and inaccessible to vehicles from Chestnut Street, the wooden guardrail, consisting of approximately two-foot-high telephone poles with a horizontal wooden rail running through it (which originally was used to prevent trucks from driving off the haul road), was left in place at the request of the property owner to protect hikers from falling from the steep slope. The Village of Cold Spring Planning Board has requested the submission of site plan documentation showing the changes that have been made to his property so that it can review the matter. EPA is working with the property owner and the contractor that performed the

remediation of the site so that this information can be provided to the Planning Board.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 20, 1996.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321 (c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.: p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.: p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing the Marathon Battery Corporation site, Cold Spring, New York.

[FR Doc. 96–26453 Filed 10–17–96; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket 96–128; DA 96–1666]

Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final Rule: Correction.

SUMMARY: The Federal Communications Commission (''Commission'') adopted a Report and Order implementing Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). This correction makes certain technical and typographical corrections to the Report and Order. This correction is issued to accurately reflect the Commission's intent in implementing Section 276 of the 1996 Act.

EFFECTIVE DATES: The amendments to the heading of subpart M of part 64 and § 64.1301 are effective November 6, 1996. The amendment to § 64.703 is effective December 16, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, 202–418–0960, Enforcement Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: On June 4, 1996, the Commission adopted a Notice of Proposed Rulemaking (''NPRM'') [61 FR 33074, June 4, 1996] to implement Section 276 of the Telecommunications Act of 1996. On September 20, 1996, the Commission adopted and released a Report and Order in CC Docket No. 96–128 [61 FR 52307, October 7, 1996]. The Errata makes certain technical and typographical corrections to the Report and Order. The full text of the Errata and Report and Order are available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of the Report and Order may also be purchased from the Commission's duplicating contractor, international Transcription Services, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. The Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Parties must file any petitions for reconsideration of the Report and Order within 30 days from release of that document. The Commission waives the requirements of Section 1.4 of its rules to establish this new date of public notice in light of the deadline established in the 1996 Act to complete this proceeding. Parties may file oppositions to the petitions for reconsideration pursuant to Section 1.106(g) of the rules, except that oppositions to the petitions must be filed within seven (7) days after the date for filing the petitions for reconsideration. The Commission will not issue a separate notice of any petitions for reconsideration; the Report and Order serves as notice to all interested parties of the due dates for petitions and oppositions. In addition, the Commission waives Section 1.106(h) of the rules and will not accept reply comments in response to oppositions. The Commission concludes that these actions are necessary to complete all Commission action in this proceeding, which involves issues concerning the expedited implementation of the 1996 Act, by the statutory deadline of November 8, 1996. The Commission will consider all relevant and timely petitions and oppositions before final action is taken in this proceeding.

Petitions for reconsideration must comply with Sections 1.106 and 1.49 and all other applicable sections of the Commission's rules. Petitions also must clearly identify the specific portion of the Report and Order for which relief is sought. If a portion of a party's arguments does not fall under a particular topic listed in the outline of the Report and Order, such arguments should be included in a clearly labeled section at the beginning or end of the filing. Parties may not file more than a total of ten (10) pages of ex parte submissions, excluding cover letters. This 10 page limit does not include: (1) written ex parte filings made solely to disclose an oral ex parte contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; or (3) written material filed in response to direct requests from Commission staff. Ex parte filings in excess of this limit will not be considered as part of the record in this proceeding.

To file a petition for reconsideration in this proceeding parties must file an original and ten copies of all petitions and oppositions. Petitions and oppositions should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. If parties want each Commissioner to have a personal copy of their documents, an original plus fourteen copies must be filed. In addition, participants should submit two additional copies directly to the Common Carrier Bureau, Enforcement Division, Room 6008, 2025 M Street NW, Washington, D.C. 20554. The petitions and oppositions will be available for public inspection during regular business hours in the Dockets Reference Room (Room 230) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. Copies of the petition and any subsequently filed documents in this

matter may be obtained from ITS, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800.

Ordering Clauses

1. Section 64.703 is amended as set forth below effective December 16, 1996, and § 64.1301, the heading of Subpart M of Part 64, and the Attachment, are amended as set forth below effective November 6, 1996.

List of Subjects

47 CFR Part 64

Communications common carriers, Payphone compensation, Operator service access, Telephone.

Federal Communications Commission.

Mary Beth Richards,

Deputy Chief, Common Carrier Bureau.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. Effective December 16, 1996, Section 64.703 is amended by removing ''67.703'' in the section heading and adding in its place ''64.703.''

2. Effective November 6, 1996, the heading of Subpart M of Part 64 is revised to read as follows:

Subpart M—Provision of Payphone Service

3. Effective November 6, 1996, Section 64.1301 is amended by revising the section heading; and by revising paragraphs (a), (b) and (d) to read as follows:

§ 64.1301 Payphone compensation.

(a) Each payphone service provider eligible to receive compensation shall be paid $45.85 per payphone per month for originating access code and toll-free calls.

(b) This compensation shall be paid by interexchange carriers (IXCs) that earn annual toll revenues in excess of $100 million, as reported in the FCC staff report entitled ''Long Distance Market Shares.'' Each individual IXC's compensation obligation shall be set in accordance with its relative share of toll revenues among IXCs required to pay compensation. For example, if total toll revenues of IXCs required to pay compensation is $50 billion, and one of these IXCs had $5 billion of total toll revenues, the IXC must pay $4.585 per payphone per month.

* * * * *

(d) IXCs obligated to pay compensation and payphone service providers are responsible for establishing their own billing or payment arrangements.

* * * * *

4. The Attachment—Interim Compensation Obligations—is revised to read as follows:

This Attachment will not be published in the Code of Federal Regulations.

ATTACHMENT—INTERIM COMPENSATION OBLIGATIONS

Company	1995 total toll services revenues (in millions)	Percent of total toll revenues	Amount per phone per month
AT&T COMPANIES:			
AT&T COMMUNICATIONS, INC	$38,069	56.69	$25.9923406
ALASCOM, INC	325	0.48	0.2219000
MCI TELECOMMUNICATIONS CORP	12,924	19.25	8.8241091
SPRINT COMMUNICATIONS CO.	7,277	10.84	4.9685115
LDDS WORLDCOM	3,640	5.42	2.4852799
FRONTIER COMPANIES:			
ALLNET COMM. SVCS. dba FRONTIER COMM. SVCS	827	1.23	0.5646501
FRONTIER COMMUNICATIONS INT'L, INC	309	0.46	0.2109757
FRONTIER COMM. OF THE NORTH CENTRAL REGION	133	0.20	0.0908083
FRONTIER COMMUNICATIONS OF THE WEST, INC	127	0.19	0.0867117
CABLE & WIRELESS COMMUNICATIONS, INC	700	1.04	0.4779384
LCI INTERNATIONAL TELECOM CORP	671	1.00	0.4581381
EXCEL TELECOMMUNICATIONS, INC	363	0.54	0.2478452
TELCO COMMUNICATIONS GROUP, INC	215	0.32	0.1467954
MIDCOM COMMUNICATIONS, INC	204	0.30	0.1392849
TEL-SAVE, INC	180	0.27	0.1228985
U.S. LONG DISTANCE, INC	155	0.23	0.1058292
VARTEC TELECOM, INC	125	0.19	0.0853461
GE CAPITAL COMMUNICATIONS SERVICES CORP	120	0.18	0.0819323
GENERAL COMMUNICATION, INC	120	0.18	0.0819323
MFS INTELENET, INC	118	0.18	0.0805668
BUSINESS TELECOM, INC	115	0.17	0.0785185
COMMUNICATION TELESYSTEM INT'L	115	0.17	0.0785185
ONCOR COMMUNICATIONS, INC	111	0.17	0.0757874
THE FURST GROUP, INC	109	0.16	0.0744218
AMERICAN NETWORK EXCHANGE, INC	101	0.15	0.0689597
TOTAL	67,153	100.00	45.85

[FR Doc. 96–26901 Filed 10–17–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 219 and Appendix I to Chapter 2

[DFARS Case 96–D317]

Defense Federal Acquisition Regulation Supplement; Pilot Mentor-Protégé Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the dates for application into, and reimbursement of costs under, the DoD Pilot Mentor-Protégé Program.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD (A&T) DP (DAR), 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 96–D317 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201). Section 802: (1) extends, to September 30, 1998, the date by which an interested company must apply for participation as a mentor firm under the DoD Pilot Mentor-Protégé Program; and (2) extends to September 30, 1999, the date by which mentor firms must incur costs in order to be eligible for reimbursement under the Program.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not contain any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 219 and Appendix I to Chapter 2 are amended as follows:

PART 219—[AMENDED]

1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

219.7104 [Amended]

2. Section 219.7104 is amended in the last sentence of paragraph (b) by revising the date ''October 1, 1996'' to read ''October 1, 1999''.

Appendix I to Chapter 2 [Amended]

3. Appendix I to Chapter 2 is amended in section I–102, paragraphs (a) and (b), and in section I–103, paragraph (a), by revising the date ''September 30, 1996'' to read ''September 30, 1998''.

4. Appendix I to Chapter 2 is amended in section I–103, paragraph (b) introductory text, by revising the date ''September 30, 1996'' to read ''September 30, 1999''.

[FR Doc. 96–26533 Filed 10–17–96; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC47

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Four Plants and Threatened Status for One Plant From the Central Sierran Foothills of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for four plants—*Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrae* (El Dorado bedstraw). The Service also determines threatened status for *Senecio layneae* (Layne's butterweed). These species all occur on gabbroic or serpentine-derived soils in the central Sierran foothills of California within chaparral or oak woodland communities. Urbanization and the ensuing habitat fragmentation, road construction and maintenance, herbicide spraying, change in fire frequency, off-road vehicle use, unauthorized dumping, horse overgrazing, competition from invasive alien vegetation, and mining imperil these five species. This rule implements Federal protection and recovery provisions afforded by the Act for these five plants.

EFFECTIVE DATE: November 18, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Field Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section) (telephone 916/979–2122; facsimile 916/979–2128).

SUPPLEMENTARY INFORMATION:

Background

Calystegia stebbinsii (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), *Galium californicum* ssp. *sierrae* (El Dorado bedstraw), and *Senecio layneae* (Layne's butterweed) occur primarily on the Pine Hill intrusion, an area of approximately 10,400 hectares (ha) (25,700 acres (ac)), in western El Dorado County, California, ranging in elevation from 138 to 628 meters (m) (453 to 2,060 feet (ft)). In addition, *C. stebbinsii* and *S. layneae* have a few known isolated occurrences in El Dorado, Nevada, and/or Tuolumne counties, California. All of the species included in this final rule exhibit substrate preferences. *Ceanothus roderickii, F. californicum* ssp. *decumbens,* and *G. californicum* ssp. *sierrae* are endemic to gabbro-derived soils on the Pine Hill intrusion, and *C. stebbinsii* and *S. layneae* occur on gabbro and serpentine-derived soils. One known occurrence of *S. layneae* was found on metamorphic-derived soils.

Gabbro-derived soils originate from mafic rocks (gabbrodiorite) that are mildly acidic, are rich in iron and magnesium, and often contain other heavy metals such as chromium (Wilson 1986). Gabbro, a dark large-crystalled rock, is formed when liquid magma cools slowly underground. A red soil is

formed when the rock is exposed and weathers at the earth's surface (EIP Associates 1991). These soils are well-drained and are underlain by gabbrodiorite rocks at a depth of more than 1 meter (3.28 feet) (U.S. Department of Agriculture, Soil Conservation Service 1974).

Serpentine-derived soils are formed through a process similar to formation of gabbro-derived soils. Serpentine soils are derived from ultramafic rocks (e.g., serpentinite, dunite, and peridotite). They tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). ''Gabbro soils are considered to be edaphically similar to serpentine because of their mineral composition and because they appear to influence plant distributions in much the same way'' (Wilson 1986).

The three plant communities occurring on the Pine Hill intrusion are chaparral, oak woodland, and savanna. The vegetation type of this area is distinctive enough that Robert Holland (1986), based upon Wilson (1986), designated a community known as gabbro-derived northern mixed chaparral. This community is characterized by being ''edaphically restricted to ultramafic gabbro in a mixed chaparral which is dominated by *Adenostoma fasiculatum* (chamise), and usually occurring on rather xeric exposures'' (Holland 1986). *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens,* and *Senecio layneae* occur in fire-dependent chaparral habitat; *F. californicum* ssp. *decumbens* and *S. layneae* also occur in the ecotone between chaparral and oak woodland; *Galium californicum* ssp. *sierrae* and *S. layneae* occur in oak woodland (Wilson 1986). None of the plants in this rule occur within savanna, which makes up approximately 27 percent of the vegetation on the Pine Hill intrusion.

Loss of habitat, fragmentation, and alteration of natural ecosystem processes have resulted from residential and commercial development. Housing and commercial development, road maintenance, grading, change in fire frequency, unauthorized dumping, off-road vehicle use, overgrazing practices, herbicide spraying, mining, competition from invasive alien vegetation, and other human-caused conditions threaten the remaining occurrences of these plants.

These plants occur within a fire-adapted plant community, either within chaparral or on the ecotone between chaparral and woodland. Change in fire frequency alters the natural processes within several plant communities in California. Historically, fire occurred in chaparral on the average of 3 to 5 times every 100 years (Boyd 1985). Fire is important for seed germination and seedling reestablishment by eliminating competition and shading, as well as replenishing nutrients to the soil. Without periodic fires, the previously mentioned plants either do not reproduce by seed or may become shaded by other plants.

Discussion of the Five Species

G. Ledyard Stebbins collected the type specimen of *Calystegia stebbinsii* in 1970, 17 kilometers (km) (10 miles (mi)) west of Placerville in El Dorado County, California. Richard K. Brummitt (1974) described the species using specimens collected by Stebbins as the type.

Calystegia stebbinsii is a leafy perennial herb in the morning-glory family (Convolvulaceae). Its stems range up to 1 m (3.28 ft) in length and generally lie flat on the ground. The leaves are palmately lobed with the two outermost lobes being divided again. The leaf lobes are narrow and lance-shaped. White flowers, which appear in May through June, are on stalks 3 to 13 cm (1 to 5 in) long and bear two leaf-like bracts. The fruit is a slender capsule. Its distinctively shaped leaves, each having 7 to 9 narrow lance-shaped lobes, distinguish *C. stebbinsii* from other California morning-glories.

Calystegia stebbinsii occurs in two localized areas. Most occurrences of *C. stebbinsii* are discontinuously scattered within two population centers in the northern and southern portions of the Pine Hill intrusion. *Calystegia stebbinsii* does not occur at the center of the intrusion on Pine Hill. It recently was discovered in Nevada County near the County landfill, where it was sparsely scattered over a distance of 6.5 km (3.5 mi) (California Diversity Database (CNDDB) 1994). In El Dorado County, the species is associated with chaparral on gabbro-derived soils. In Nevada County it occurs on serpentine. The species may have been transplanted from El Dorado County by the transport of soil to the Nevada County Sanitary Landfill (Carla DeCrona, California Department of Fish and Game (CDFG), pers. comm. 1992; *The Union* 1991). *Calystegia stebbinsii* occurs primarily on privately owned land, although, the Bureau of Land Management (BLM) manages land harboring some occurrences. Development has extirpated at least one-third of the known occurrences (CDFG 1990a). Other threats to these populations include off-road vehicle use, grading, dumping, road maintenance, change in fire frequency, and competition with invasive alien vegetation (CNDDB 1994).

Beecher Crampton first collected *Ceanothus roderickii* in 1956 from Pine Hill in El Dorado County, California. Walter Knight described *C. roderickii* in 1968, naming it after Wayne Roderick, who first suspected the horticultural value of this endemic shrub (Knight 1968). Knight (1968) considered *C. roderickii* to be most closely related to *C. cuneatus,* which also grows throughout the area. *Ceanothus roderickii* can be differentiated from its congeners by its blue-tinged flowers, prostrate habit, and inconspicuously horned fruit.

Ceanothus roderickii is a prostrate evergreen shrub of the buckthorn family (Rhamnaceae) that generally grows to 3 m (9.84 ft) in diameter. The smooth gray-brown branches radiate from a central axis and root when they come into contact with the ground. The leaves of the species are semi-erect with entire margins. Small whitish flowers tinged with blue appear from May through June. Its fruit is an inconspicuously horned globe-shaped capsule.

Ceanothus roderickii is restricted to gabbro-derived soil in openings in chaparral or more infrequently on previously disturbed sites within chaparral (Wilson 1986). The species is restricted to one localized area of approximately 10 known extant occurrences discontinuously scattered in the Pine Hill intrusion (CNDDB 1994). Residential and commercial development, inadequate regulatory mechanisms, off-road vehicle use, road-widening, change in fire frequency, and other human-caused conditions are responsible for the decline of *C. roderickii.* Commercial development has extirpated two known occurrences (CNDDB 1994). *Ceanothus roderickii* occurs primarily on private land. BLM owns part of one site and the California Department of Forestry (CDF) owns another site.

Beecher Crampton made the first collection of *Fremontodendron californicum* ssp. *decumbens* in 1956. Robert Lloyd (1965) described *F. californicum* ssp. *decumbens* as *F. decumbens* based on the type specimen Lloyd collected in May 1964 from ''California, El Dorado Co., Pine Hill, ca. 3 km north of Rescue.'' Philip Munz (1968) reduced *F. decumbens* to a subspecies of *F. californicum.* Walter Kelman (1991), in his revision of *Fremontodendron,* recognized *F. californicum* ssp. *decumbens* as a full species based upon morphological variation. Nonetheless, the plant is treated as *F. californicum* ssp.

decumbens in the Jepson Manual (Whetstone and Atkinson 1993).

Fremontodendron californicum ssp. *decumbens* is a branched spreading shrub of the cacao family (Sterculiaceae) growing to 1.3 m (4 ft) tall. Dense star-shaped hairs cover the leaves and the younger twigs and branchlets. The leaves of the subspecies are elliptic-ovate to ovate, shallowly or deeply palmately lobed with 5 to 7 lobes. Showy light-orange to reddish-brown flowers appear from late April to early July. Its fruit is a capsule. *Fremontodendron californicum* ssp. *decumbens* can be distinguished from *F. californicum* ssp. *californicum* and *F. mexicanum* by its decumbent growth habit, its relatively long peduncles, and its copper-orange flowers.

Fremontodendron californicum ssp. *decumbens* occurs on scattered rocky outcrops either in chaparral or in the ecotone between woodland and chaparral. The subspecies depends on fire to promote seed germination, and Boyd (1996) documented that seeds are dispersed by ants. It is only known from one localized area near Pine Hill in western El Dorado County scattered within an area of approximately 2,000 ha (5,000 ac). Although there are some reports of *F. californicum* ssp. *decumbens* occurring in some small scattered populations in Yuba or Nevada County, other reports describe these individuals as aberrant *F. californicum* ssp. *californicum*. *Fremontodendron californicum* ssp. *decumbens* occurs primarily on private land, but one site is on BLM land. CDF and CDFG also own another site.

The largest population of *Fremontodendron californicum* ssp. *decumbens* is on the Pine Hill Ecological Reserve managed by CDFG. The proximity of this plant to human population centers and intensive development activities renders *F. californicum* ssp. *decumbens* vulnerable to the long-term effects of fire suppression. The restricted distribution of the subspecies increases its susceptibility to catastrophic events such as disease or pest outbreak, severe drought, or other natural or human-caused disasters. In addition, residential and commercial development (including unregulated grading for homes or barns on existing large parcels), and trash dumping threaten *F. californicum* ssp. *decumbens*.

The type specimen for *Galium californicum* ssp. *sierrae* was collected 1.7 km (1 mi) north of Pine Hill Lookout in western El Dorado County, California. Lauramay Dempster and G. Ledyard Stebbins (1968) described *G. californicum* ssp. *sierrae*.

Galium californicum ssp. *sierrae* is a softly hairy perennial herb in the coffee family (Rubiaceae). Four narrow leaves are arranged at each node. The pale yellow flowers, which are clustered at the tips of stems, appear in May and June. Minute hairs cover the fleshy fruit. *Galium californicum* ssp. *sierrae* can be distinguished from other subspecies of *G. californicum* by its very narrow leaves.

Galium californicum ssp. *sierrae* is restricted to one localized area—Pine Hill and surrounding ridges to the west within a distance of approximately 4 km (2.5 mi) (Baad and Hanna 1987). The subspecies grows in oak woodland areas, including sites with ponderosa pine and gray pine (Wilson 1986). *Galium californicum* ssp. *sierrae* occurs primarily on private land. BLM manages the land where at least one population occurs. CDF and CDFG manage one site as well. Residential development, road construction, grazing by horses, and irrigation threaten *G. californicum* ssp. *sierrae*. Restricted distribution and limited numbers of individuals make it susceptible to catastrophic events such as disease or pest outbreak, severe drought, or other natural disasters.

Kate Brandegee Layne-Curran collected the type specimen for *Senecio layneae* in May 1883 from El Dorado County, California, on Sweetwater Creek, not far from Folsom. E. L. Greene first described *S. layneae* in 1883 (Greene 1883). Although Asa Gray reduced *S. layneae* to a variety of *S. fastigiatus* (1884), the species currently is known as *S. layneae* (Barkley 1993). The type population is now thought to be extirpated due to inundation by Folsom Lake.

Senecio layneae is a perennial herb of the aster family (Asteraceae) that sprouts from a rootstock. Its mostly basal lance-shaped leaves are 8 to 24 cm (3 to 10 in) long. The several flower heads are 4 to 6 cm (2 to 3 in) wide each having 5 to 8 orange-yellow ray flowers and numerous yellow disk flowers. *Senecio layneae* flowers between April and June.

Senecio layneae grows in open rocky areas within chaparral plant communities, primarily on gabbro-derived soil formations and occasionally on serpentine soils. Most known sites are scattered within a 16,200 ha (40,000 ac) area in western El Dorado County that includes the Pine Hill intrusion and adjacent serpentine. A few other colonies occur in the Eldorado National Forest in El Dorado County and in the BLM Red Hills Management Area in Tuolumne County (BioSystems Analysis, Inc. 1984). *Senecio layneae* primarily occurs on privately owned land. Some populations of *S. layneae* also occur on Federal land managed either by the Forest Service or BLM. One site is on land managed by CDF and CDFG. Residential and commercial development, road maintenance, change in fire frequency, off-road vehicle use, competition with invasive alien vegetation, excessive horse grazing practices, mining, and other human-caused conditions threaten and are responsible for the declining trend for *S. layneae* (CDFG 1990b, CNDDB 1994).

Previous Federal Action

Federal government actions on the five plants began as a result of section 12 of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Fremontodendron decumbens* (now known as *Fremontodendron californicum* ssp. *decumbens*), *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as endangered and *Ceanothus roderickii* as threatened. The Service published a notice on July 1, 1975, (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Calystegia stebbinsii*, *F. decumbens*, *G. californicum* ssp. *sierrae*, and *S. layneae*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, publication (43 FR 17909). The Act Amendments of 1978 (Amendments) required the Secretary to withdraw all proposals not adopted as final regulations within two years from their publication in the Federal Register. Proposals published before the date of enactment of the Amendments could be withdrawn before the end of a 1-year grace period. On December 10, 1979, the Service published a notice of

withdrawal (44 FR 70796) of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Calystegia stebbinsii*, *Fremontodendron decumbens*, *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as category 1 candidates for Federal listing, and *Ceanothus roderickii* as a category 2 candidate. Category 1 taxa were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Category 2 taxa were those for which data in the Service's possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not known or on file to support proposed rules. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640). This supplement changed *C. stebbinsii*, *F. decumbens*, *G. californicum* ssp. *sierrae*, and *S. layneae* from category 1 to category 2 candidates.

The September 27, 1985 (50 FR 39526), plant Notice of Review included *Calystegia stebbinsii*, *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens* (as *Fremontodendron decumbens*), *Galium californicum* ssp. *sierrae*, and *Senecio layneae* as category 2 candidates. The February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), plant notices of review included *C. roderickii* and *F. californicum* ssp. *decumbens* (as *F. decumbens*) as category 1 candidates and *C. stebbinsii*, *G. californicum* ssp. *sierrae*, and *S. layneae* as category 2 candidates. On February 28, 1996, the Service published a Notice of Review in the Federal Register (61 FR 7596) that discontinued the use of categories and removed former category 2 species from candidate status.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens*, *Galium californicum* ssp. *sierrae*, and *Senecio layneae* because the 1975 Smithsonian report was accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reaffirmed annually in October of 1983 through 1993. Publication of the proposed rule constituted the final finding for the petitioned action.

A proposal to list *Calystegia stebbinsii*, *Ceanothus roderickii*, *Fremontodendron californicum* ssp. *decumbens*, and *Galium californicum* ssp. *sierrae* as endangered and *Senecio layneae* as threatened was published on April 20, 1994 (59 FR 18774). The proposal was based on information supplied by reports to the California Diversity Database; observations and studies by numerous botanists; and reports by EIP associates, Jones & Stokes Associates, and Biosystems Analysis, Inc.

The processing of this final listing rule conforms with the Service's final listing priority guidance published on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6) and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2.

Summary of Comments and Recommendations

In the April 20, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that would contribute to the development of a final rule. A 90-day comment period closed on July 19, 1994. Appropriate Federal and State agencies, county and city governments, scientists, and interested parties were contacted and requested to comment. The Service published notices in the *Sacramento Bee* on May 6 and 12, 1994, *Placerville Mountain Democrat* on May 9, 1994, and *Grass Valley Union* on May 6, 1994, inviting general public comment. Thirty-eight individuals or agencies, including State and Federal congressmen, El Dorado County Board of Supervisors, BLM, California Cattlemen's Association, California Department of Forestry and Protection, and California Native Plant Society (CNPS), submitted comments. Several individuals commented more than once. Ten commenters supported, 25 opposed, and three were neutral on the proposed action.

In response to the publication of the proposed rule, Daniel Macon, Director of Industry Affairs, California Cattlemen's Association; William Hazeltine, Environmental Consultant, Oroville, California; and Robert Feusi, Gardner-Feusi Company, Sacramento, California requested a public hearing in letters dated May 2, 1994, April 4, 1994, and June 3, 1994 respectively. Notice of the public hearing was published in the *Sacramento Bee* (June 14, 1994), a newspaper with a large circulation, as well as in the *Placerville Mountain Democrat* (June 15, 1994), and the *Grass Valley Union* (June 14, 1994). A public hearing was held at the Radisson Hotel in Sacramento on June 30, 1994, from 6 pm. to 8 pm. Twenty people presented oral and written testimony.

Written comments and oral statements presented at the public hearing and received during the comment period are addressed in the following summary. Comments of a similar nature are grouped together into general issues. These issues and the Service's responses are presented below.

Issue 1: Many commenters expressed concern that the listing would negatively impact property owners' ability to clear vegetation from around their homes for fire protection. One commenter stated the listing may be in opposition to the State fire codes requiring ''defensible space'' for fire protection. Others thought that ''homeowners who removed vegetation around their homes for fire protection could be deemed criminals.''

Service Response: Removing listed plants from one's own land is not prohibited by the Act. Listing the five plants as endangered or threatened would not prohibit the cutting of a defensible space around an individual's residence. Other activities that do not violate section 9(a)(2) of the Act, as well as prohibited acts, are discussed further under ''Conservation Measures.''

Issue 2: Several people expressed concerns regarding the adverse economic impact listing would have on the economy of El Dorado County.

Service Response: Under section 4(b)(1)(A), a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to

''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological considerations from affecting such decisions,'' H. R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, ''Applying economic criteria * * * to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word ''solely'' in this legislation,'' H. R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). Because the Service is precluded from considering economic impacts in a final decision on a proposed listing, the Service has not examined such impacts.

Issue 3: Several commenters stated that specific data used in preparation of the proposed rule were unavailable for review and comment.

Service Response: The proposed rule summarized and cited available scientific and commercial information. The supporting documentation was available during the public comment period for review as stated in the proposed rule. Two individuals requested to review this documentation.

Issue 4: Several commenters requested either no further action be undertaken with the listing process of these five plants because of the existence of the El Dorado County preserve system plan, or that efforts be postponed until local attempts to conserve the species are completed. Several commenters also contended that adequate regulatory mechanisms currently are in place to protect the plants, through the California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA).

Service Response: As discussed in Factor D, in the ''Summary of Factors Affecting the Species'' section, the preserve system approved in concept by the El Dorado County Board of Supervisors generates no habitat acquisition funding, provides no clear mechanism to protect habitat, and fails to include a preserve in the southern part of the gabbro-derived soil formation. The Service agrees that local ecosystem planning can be an effective way to coordinate conservation and development objectives, and we encourage El Dorado County in its planning effort. However, the present status of the County plan does not provide sufficient assurances for habitat protection.

The only protection given to State-listed species is the requirement that landowners give CDFG 10 days notice of any land use change. The CEQA requires mitigation for projects that adversely affect listed species as well as those that qualify for State listing; however, many mitigation attempts do not secure long-term protection for such plants (Howald 1993). The failure of existing regulatory mechanisms to adequately protect the plants are further discussed under Factor D.

Issue 5: Several commenters questioned the necessity for listing the species now, since the species have been under consideration for Federal listing for 19 years, and contended that the reason the taxa were being proposed was because of a lawsuit settlement agreement between the Service and CNPS rather than on purely scientific grounds.

Service Response: While the CNPS lawsuit settlement may have brought more public attention to declining California plant species, the suit does not change the standards by which species are evaluated for potential listing. As stated under Issue 2 above, the Endangered Species Act directs the Service to list species on the basis of biological vulnerability.

Issue 6: A few commenters stated that the Service must prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule.

Service Response: For the reasons set out in the NEPA section of this document, the Service has determined that the rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The Federal courts have held in *Pacific Legal Foundation v. Andrus*, 657 F.2d 829 (6th Circuit 1981), that an EIS is not required for listing under the Act. The Sixth Circuit decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act.

Issue 7: Many commenters indicated that the Service should designate critical habitat. One commenter stated ''without the process of assessing and designating critical habitat, the public will be denied its statutory right to participate in the development of a rational and effective recovery plan.''

Service Response: The Service has concluded that, at this time, the danger posed to the five plant species by designating critical habitat outweighs any potential benefit. As discussed in the ''Summary of Factors Affecting the Species'' section, all five plants could be adversely affected by acts of vandalism if the sites become known through the critical habitat designation process. In addition, as discussed further under the ''Critical Habitat'' section, the potential benefit gained by designating critical habitat is limited. Regarding development and implementation of recovery plans, Service policy (59 FR 34270) solicits active participation by the scientific community, local, State, and Federal agencies, Tribal governments, and other interested parties.

Issue 8: A few commenters stated that the Service had not adequately notified the public regarding the proposed rule. Another commenter requested to have the hearings held locally.

Service Response: The Service published a notice of the proposed rule regarding these five plants in the Federal Register on April 20, 1994 (59 FR 18774). The Service mailed 50 notifications of the proposed rule to Federal, State, county entities, species experts, and other individuals to solicit their input. Additionally, the Service paid for the publication of public notices regarding the proposed rule in the following newspapers—*Sacramento Bee*, *Placerville Mountain Democrat* and the *Grass Valley Union*. In response to the requests for a public hearing, the Service announced the scheduling of a public hearing in the Federal Register on June 9, 1994 (59 FR 29778), and shortly thereafter published additional notices in the *Sacramento Bee,* a local newspaper with a large circulation, the *Placerville Mountain Democrat,* and the *Grass Valley Union*. The Service also mailed notification of the public hearing to a variety of interested parties.

Issue 9: One commenter stated that the Service needs to complete a Regulatory Impact Analysis, as directed by Presidential Executive Order 12630, for the proposed rule to list the five plants. Three commenters were concerned about the listing violating private property rights within the Fifth and Fourteenth Amendments to the U.S. Constitution.

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued implementation guidelines to the Department of the Interior (Department). Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, an agency's action might be subject to legal challenge if it did not consider or act upon economic information. In these cases, the Attorney General's guidelines state that Taking Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which

its discretion is restricted. The purpose of the TIAs in these special circumstances is to inform policy makers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Endangered Species Act, Congress required that listings be based solely upon scientific and commercial data indicating whether or not the species are in danger of extinction. Thus, by law and U.S. Attorney General guidelines, the Service is forbidden to conduct such TIAs prior to listing.

Regarding personal property rights within the Fifth and Fourteenth amendments, the mere promulgation of a regulation is rarely sufficient to establish that private property has been taken unless the regulation denies the property owner all economically viable use of personal property. Listing pursuant to the Act does not restrict all uses of one's land. Property owners cannot establish that their properties have been taken as a result of a regulatory action such as the listing of a species until development proposals are denied. Property owners must apply for all available permits and waivers before takings potentially could be established.

Issue 10: One commenter believes the only threat to the plants is the natural progression of chaparral and change in fire frequency.

Service Response: As discussed further in the ''Summary of Factors Affecting the Species'' section, numerous threats imperil these five species including urbanization and its ensuing habitat fragmentation, road construction and maintenance, grading, herbicide spraying, off-road vehicle use, change in fire frequency, unauthorized dumping, overgrazing by horses, competition from invasive alien vegetation, and mining.

Issue 11: One commenter stated *Calystegia stebbinsii* should not be listed because it needs disturbance. This commenter also noted that this plant would not be around after 5 to 10 years without disturbance.

Service Response: Limited surface disturbance benefits *Calystegia stebbinsii* in certain circumstances by promoting initial establishment, though, the type and amount of disturbance the plant can tolerate is important. Whereas occasional disturbance for scarification of seed may be beneficial, other types of disturbance, such as mowing once the plant is growing, or construction, would be detrimental to the species' survival.

Issue 12: One commenter stated that listing the species would cause needless duplication with the State process.

Service Response: Federal and State regulations often complement each other. For example, as discussed in Factor D in the ''Summary of Factors Affecting the Species'' section, the CEQA and CESA apply only to actions on private and State lands. Whereas, the Act primarily covers Federal land and Federal actions that may affect proposed and listed species.

Issue 13: Some commenters believed no specific justification for listing exists, or questioned the adequacy of the data. One commenter believed that many of the items listed in the proposed rule were wholly inaccurate and did not support the listing. One commenter stated the listing should be based on good science and local peer review.

Service Response: Specific justification for listing the five plant species is summarized in Factors A through E. The Service used information received from the CNDDB, botanical collections, knowledgeable botanists, and from studies specifically directed at gathering the information on the distribution and threats to the five plants. Additionally, information was received from Federal, State, and local agencies, and professional botanists during the preparation of the proposed rule. Destruction, loss of habitat, and extirpation of populations of these plants from a variety of causes have been documented. As discussed in Issue 8, the Service sought comments on the proposed rule from Federal, State, county entities, species experts, and other individuals. All substantive new data received during the public comment period have been incorporated into the final rule.

Issue 14: One commenter stated that grazing by cattle and other ungulates has been a historical and integral component of the central Sierran ecosystem, and that properly managed grazing by cattle and other domestic livestock can create the habitat conditions and vegetative diversity required by many species of plants and wildlife.

Service Response: The commenter did not provide specific information on the role of domestic livestock in the gabbro-derived/serpentine habitat of the five plants. However, assuming the area referred to includes chaparral, wild ungulates and other herbivores, such as deer and rabbit species, have been an integral component of the ecosystem. Chaparral characteristically does not produce high amounts of grass and, typically, is not an important source of forage for domestic livestock (Stoddart *et al.* 1975). The Service agrees that cattle and other domestic livestock can be managed to achieve natural resource objectives, including a diversity of habitats for many species of plants and wildlife.

To determine the effects of grazing, site specifics of the management regime need to be considered and evaluated. Grazing by cattle in rangeland situations currently does not appear to be affecting these plants on the Pine Hill intrusion. As discussed in Factor C, the principal impact on the plants under consideration is consumption that results when horses are paddocked on small rural residential lots of insufficient size to provide adequate forage or pasture.

Issue 15: One commenter stated that there has been no further degradation or destruction of habitat of any kind since 1989.

Service Response: While public awareness of the importance of protecting plant habitat has increased, as discussed in Factors A and E, the primary threat facing these plants remains habitat destruction and fragmentation from urbanization, road construction, and increased human activity.

Issue 16: One commenter was concerned about what happens when a species that is thought to be rare is listed and new populations are subsequently found.

Service Response: If scientific or commercial information indicates a species is much more abundant or widely spread than is currently thought and/or a species is no longer endangered or threatened by any of the five factors, a species may be delisted. The process for delisting a species is similar to the process for listing a species. Although additional populations of the five proposed plants could be found, it is unlikely that many populations would contain large numbers. As discussed in the ''Introduction'' and ''Summary of the Factors Affecting the Species'' sections, these plants are habitat specific endemics that are exposed to range-wide human related threats.

Issue 17: One commenter stated that managing fire on smaller rather than larger units is both practical and often more ecologically beneficial due to the greater control that can be achieved.

Service Response: The Service agrees that fire can be applied in a more precise way on smaller units than larger units. The Service desires to work cooperatively with local fire management agencies in designing prescriptions that accommodate public safety and plant conservation objectives.

Issue 18: One commenter claimed that the Service has no jurisdiction over the five proposed species because at least 80 percent of the existing populations occur on private land.

Service Response: Section 4 of the Act directs the Service to evaluate species for listing based on biological information only. The five factors on which the biological vulnerability of species are evaluated are discussed in the ''Summary of Factors Affecting the Species'' section. Land ownership is not a factor used to determine whether listing is appropriate.

Issue 19: Two commenters were concerned about the additional time that might be added to implementing a controlled burn program due to the section 7 consultation process. One commenter wanted the Public Agencies Prescribed Burn Plan and Environmental Review to be accepted in lieu of the section 7 process. The other commenter wanted special rules to advocate professionally planned and implemented prescribed burning.

Service Response: The Service recognizes the importance of properly timed prescribed burns as a conservation measure, not only for maintaining habitat, but also for protecting human life and personal property. At least 80 percent of the occurrences of these plants are on private land. No special rules are needed to facilitate private land burning. Prescribed burning on private land would not be subject to section 7 consultation. Section 7 of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. A programmatic section 7 consultation could be performed for prescribed burns on Federal lands to eliminate the need to consult on each prescribed burn activity.

Issue 20: A few commenters expressed concern regarding the impact of listing the plants to private property owners when Federal funding permitting is required. A couple of commenters stated the listing would infringe on local water rights issues, including Federal involvement in any Auburn Dam work.

Service Response: Section 4 of the Act directs the Service to evaluate species for listing based on biological information only. The five factors on which the biological vulnerability of species are evaluated are discussed in the ''Summary of Factors Affecting the Species'' section. Impact to private landowners when Federal funding is involved, or infringement on local water rights issues are not factors used to determine whether or not listing is appropriate.

Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Issue 21: Two commenters noted confusion regarding the amount of habitat that is federally owned.

Service Response: The Service wishes to clarify the figures within the proposed rule. The Service arrived at the reported 80 percent of occurrences being on private land at by dividing the number of occurrences on private land by the total number of occurrences. It is not a percentage of the habitat that is federally owned. The 10,400 ha (25,700 ac) referred to in the rule is the area of the gabbro-derived soils. The 16,200 ha (40,000 ac) within the rule refers to an area that includes the gabbro-derived soils plus adjacent serpentine soils in western El Dorado County. Within this 16,200 ha area, 95 percent of the land is outside Federal ownership (John Upton, County of El Dorado, *in litt.* 1994).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae* should be classified as endangered species and *Senecio layneae* should be classified a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calystegia stebbinsii* Brummitt (Stebbins' morning-glory), *Ceanothus roderickii* Knight (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Lloyd) Munz (Pine Hill flannelbush), *Galium californicum* H. & A. ssp. *sierrae* Dempster & Stebbins (El Dorado bedstraw), and *Senecio layneae* Greene (Layne's butterweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At least 80 percent of the occurrences for these five plant species are on private land. They primarily occur on the Pine Hill intrusion, an area of approximately 10,400 ha (25,700 ac) in western El Dorado County. A few isolated occurrences of *Calystegia stebbinsii* or *Senecio layneae* are known from El Dorado, Nevada, and/or Tuolumne counties (EIP Associates 1991, CNDDB 1994). The primary threat facing these five species and their associated habitat is the ongoing and threatened destruction and modification of habitat by one or more of the following—urbanization and the ensuing habitat fragmentation, road construction and maintenance, off-road vehicle use, and mining.

Nearly all the remaining occurrences of the five species are threatened by destruction of habitat through residential or commercial development. The human population of the four counties just east of the Sacramento metropolitan area (Nevada, Placer, El Dorado, and Amador) increased 375 percent between 1960 and 1992 (Engellenner 1993). El Dorado County, which has a projected population growth of 54 percent between 1990 and 2005, is one of the most rapidly growing counties in California (California Department of Finance 1991, Jones and Stokes Associates 1992). In 1991, the population grew by 4.2 percent; faster than the projected growth rate of 3.6 percent (California Department of Finance 1992). Western El Dorado County is becoming a bedroom community, as it is easily accessible by freeway from several nearby cities including Sacramento. Most of the new residential growth in El Dorado County is expected to occur within western El Dorado County near Highway 50 (Jones and Stokes Associates 1992), which crosses the southern portion of the Pine Hill intrusion.

Within the gabbro-derived soil and adjacent serpentine formations in western El Dorado County, 39 proposed development projects, which variously threaten to fragment the habitat of all five species, are currently on file with El Dorado County. Development currently is planned for approximately 8.5 percent of this 16,200 ha (40,000 ac) area. In addition, the El Dorado County General Plan update proposes the conversion of vacant and agricultural land to various residential uses within the 38,400 ha (95,000 ac) western service area of the El Dorado County Irrigation District (EID) (Jones and Stokes Associates 1992), which encompasses nearly the entire Pine Hill intrusion. It is estimated that at least 50 percent of the Pine Hill intrusion is

within the EID boundary (Kirsten Tarp, Fish and Wildlife Service, pers. comm. 1996).

The proposed land uses within the western service area of the EID include a 1,000 percent increase in single family residences (from a current level of 1,857 ha (4,589 ac) to 20,254 ha (50,047 ac)) and a doubling of the rural residential uses (from 7,630 ha (18,860 ac) to 15,780 ha (39,000 ac)) (Jones and Stokes Associates 1992). The El Dorado County Water Agency proposed the construction of either additional dams, water storage facilities, or water conveyance lines on the South Fork of the American River (Jones and Stokes Associates 1992, El Dorado County Water Agency 1993). The subsequent induced growth would affect all five species in both the northern and southern portions of the Pine Hill intrusion and adjacent serpentine, either by further fragmenting the habitat (as discussed below) or by directly destroying habitat. The expanding number of people and changes in land uses will continue to place an increasing strain on undeveloped areas through activities such as off-road vehicle traffic, unauthorized garbage dumping, and changes in the pattern of wildfires.

Historical gold rush activities and clearing for agriculture reduced and fragmented habitat of the five plants. Currently, these plants face threats from habitat fragmentation associated with commercial and residential development and road construction. Fragmentation splits habitat into smaller, more isolated units and has two primary effects. First, habitat fragmentation may alter the physical environment, changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). Second, a higher proportion of these fragmented natural areas is subject to influences from external factors (e.g., additional development, lawn and garden watering, herbicide drift, and off-road vehicular use) that disrupt natural ecosystem processes.

The vegetation structure on the Pine Hill intrusion has changed significantly due to commercial and residential development, road construction, and historical fragmentation. Hunter and Horenstein (1991) characterized vegetation structure on the Pine Hill intrusion and estimated the median patch size to be only 11 ha (27 ac). This degree of fragmentation is significant within chaparral because plant species will disappear from fragments between 10 and 100 ha (25 to 250 ac) in size due to persistent disturbance and potentially due to change in fire frequency (Soulé *et al.* 1992). These and other effects of fragmentation are discussed further.

Twelve potential preserve sites were identified as the best remaining habitat for the five plants on the Pine Hill intrusion and adjacent serpentine (EIP Associates 1991). Within these 12 sites, at least 11 residential or commercial projects (Bass Lake Estates, Cameron Ridge, Fremont's Peak, Kanaka Valley, Pinnacles, Ponderosa 50, Sunset Heights, Woodleigh Ridge, and three approved parcel splits) are proposed (El Dorado County Planning Staff 1992). These projects threaten all five plants to varying degrees by directly destroying individual plants or further fragmenting and destroying their habitat.

Activities often associated with rural residential areas, such as clearing chaparral for fire protection around houses, bulldozing land (to build houses or other structures), planting fruit trees, and irrigation, also have modified the habitat within western El Dorado County (James Jokerst, Jones and Stokes Associates, pers. comm. 1993; Jo Van Ess, California State University, Sacramento, pers. comm. 1993). The ongoing repetitive clearing of chaparral destroys the habitat. Irrigation involved with lawn maintenance also adversely affects these species (Jo Van Ess, pers. comm. 1993; James Jokerst, pers. comm. 1993).

Commercial and residential development has extirpated at least one-third of the known occurrences of *Calystegia stebbinsii* (CDFG 1990a, CNDDB 1994). Most of the remaining occurrences for *C. stebbinsii* are on the Pine Hill intrusion. All of these sites, except for those in the northern part, are in areas threatened by rapid residential and commercial development as discussed above. Habitat for *C. stebbinsii* in Nevada County is threatened by a proposed County works project (CDFG 1990a).

Other human activities also destroy or damage habitat of *Calystegia stebbinsii.* One occurrence was adversely impacted by grading for construction (CNDDB 1994). Off-road vehicle use has adversely impacted the habitat of *C. stebbinsii* at one site (CNDDB 1994). In the northern part of the Pine Hill intrusion, several hills are scarred with off-road vehicle tracks. Erosion promoted by scarring adversely modifies the habitat. Road maintenance and herbicide spraying potentially threaten another site of *C. stebbinsii* that occurs along a road cut (CNDDB 1994).

Shopping center construction and other commercial development extirpated two occurrences of *Ceanothus roderickii* (CNDDB 1994). Road-widening also threatens the habitat of *C. roderickii* at one site (CNDDB 1994). Off-road vehicle use degrades the habitat at three sites in the northern part of the area (CNDDB 1994).

Construction of houses on and near Pine Hill resulted in the loss of many individuals of *Fremontodendron californicum* ssp. *decumbens* (George Clark, *in litt.* 1993). Land clearing activities that occur with road construction also threaten *F. californicum* ssp. *decumbens.* In 1968, all the vegetation along the Pine Hill approach road was cut. In 1969, the west slope of Pine Hill was cleared by the CDF, demolishing 80 percent of the *F. californicum* ssp. *decumbens* within the boundaries of the current Pine Hill Ecological Reserve (Baad and Hanna 1987). Most of these shrubs have resprouted. Presently, the Pine Hill Ecological Reserve, managed by CDFG, has the largest occurrence of *F. californicum* ssp. *decumbens.*

No known extirpations of *Galium californicum* ssp. *sierrae* due to residential or commercial development have occurred. However, as discussed above, residential or commercial development and activities associated with rural residential areas threaten *G. californicum* ssp. *sierrae* within the potential reserve area identified as the best remaining habitat. *Galium californicum* ssp. *sierrae* has a small population size and a restricted distribution almost entirely on private land.

Commercial and residential development extirpated two occurrences of *Senecio layneae* (CNDDB 1994). Many of the remaining occurrences of *S. layneae* are in areas undergoing rapid commercial and residential development. *Senecio layneae* is also potentially threatened by a variety of disturbances including road maintenance, vegetation removal, and off-road vehicle use (CNDDB 1994). Road widening occurs in the vicinity of development within El Dorado County, and this activity has already extirpated one occurrence and threatens an additional five sites (CNDDB 1994). Intensive off-road vehicle use threatens two additional occurrences of this species (CNDDB 1994). Off-road vehicle use occurred historically in Tuolumne County on BLM land, but this activity no longer occurs there. Currently, off-road vehicle use occurs on two sites within the Pine Hill intrusion on privately owned land. One site of *S. layneae* in the northern part of the intrusion is impacted by heavy off-road vehicle use and has been fragmented by the numerous roads that traverse the entire area. A southern site of *S. layneae*

that occurs across 89 ha (221 ac) was cleared in preparation for development and is subject to off-road vehicle use over part of the site (CNDDB 1994).

Habitat for *Senecio layneae* within the Traverse Creek Botanical Area in Eldorado National Forest historically was fragmented by serpentine quarrying. In addition, mining claims for semi-precious stones and gold exist on *S. layneae* habitat in the Eldorado National Forest. Although the Eldorado National Forest is trying to withdraw these claims, the withdrawal action may not be achieved (Mike Foster, Eldorado National Forest, pers. comm. 1993).

Destruction and fragmentation of habitat by commercial and residential development is the most significant and imminent threat facing *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* and *Senecio layneae*. Proposed residential or commercial development within the Pine Hill intrusion, combined with growth likely induced by proposed dams on the South Fork of the American River, threaten the majority of sites within the Pine Hill intrusion and adjacent serpentine in western El Dorado County and will adversely impact most of the range of all five taxa. Road widening, off-road vehicle use, garbage dumping, and other human-caused conditions associated with increased development threaten individual occurrences of these five species throughout their respective ranges.

B. *Overutilization for commercial, recreational, scientific, or educational purposes*. Overutilization is not currently known to be a factor for the five plants, but unrestricted collecting for scientific or horticultural purposes, vandalism, or excessive visits by individuals interested in seeing rare plants could result from increased publicity. Two of the species included in this proposal, *Ceanothus roderickii* and *Fremontodendron californicum* ssp. *decumbens*, have been used horticulturally (Schmidt 1993, Whetstone 1993), but they do not appear to be threatened by collection in the wild.

C. *Disease or predation*. Disease is a potential factor for *Fremontodendron californicum* ssp. *decumbens*. In cultivation *F. californicum* ssp. *decumbens* is highly susceptible to a wilt disease that can kill the plant almost overnight (Knight 1972). This mortality has not been observed in the field. Plants proximate to residences may be vulnerable to supplemental moisture from irrigation of lawns or gardens. Disease is not known to be a factor for any of the other taxa.

Intense insect and rodent predation occurs on *Fremontodendron californicum* ssp. *decumbens*. Boyd and Serafini (1992) studied reproductive attrition in *F. californicum* ssp. *decumbens*. They found that less than 2 percent of flower buds produced fruit because of predation by insects. In addition, rodents destroyed 90 percent of seeds under shrubs within 8 to 10 months (Boyd and Serafini 1992). Because *F. californicum* ssp. *decumbens* is very restricted in range and few individuals exist, this predation increases the chance for extinction as discussed under Factor E.

Overgrazing by horses in rural residential areas within the Pine Hill intrusion threatens *Calystegia stebbinsii, Galium californicum* ssp. *sierrae,* and *Senecio layneae*. The horses, when confined, severely graze virtually all available vegetation.

Documentation of population extirpations as a result of disease and predation does not exist. However, as discussed under Factors A and E, small population size and fragmentation increases the plants' vulnerability to predation.

D. *The inadequacy of existing regulatory mechanisms. Calystegia stebbinsii* is listed as an endangered species under the CESA (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). *Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* and *Senecio layneae* are listed by the State as rare. Individuals are required to obtain a memorandum of understanding with the CDFG to possess or ''take'' a species listed under the CESA. Although the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and CESA, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. State law does not necessarily prohibit activities that could extirpate these species. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (Native Plant Protection Act, chapter 10 sec. 1913). Ten days may not allow adequate time for agencies to coordinate the salvage of the plants.

The CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered are given the same protection as species officially listed under State or Federal endangered species acts. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species and their habitats. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency.

Section 21080(b) of CEQA allows certain projects to be exempted from the CEQA process. Ministerial projects, those projects that the public agency must approve after the applicant shows compliance with certain legal requirements, may be approved or carried out without undertaking CEQA review.

When development occurs and individual project effects are mitigated in accordance with the provisions in CEQA, the developer often will set aside small natural areas within the development. These small ''set asides'' are vulnerable to the problems of habitat fragmentation as discussed further under Factors A and E. These small set asides are impractical to manage for fire (discussed further under Factor E). Land development and multiple ownership makes difficult the planning and implementation of controlled burns at the appropriate fire frequency necessary for the maintenance of chaparral.

Within El Dorado County over the past several years, attempts have been made to establish a preserve system to protect chaparral habitat. An initial report on preserve sites and rare plant strategies, completed in November 1991, identified 12 potential preserve sites. In 1992, El Dorado County held public workshops concerning this report. A rare plant advisory committee, consisting of members from the development community, various agencies (CDFG, BLM, Service), El Dorado County planning staff, CNPS, and others, was established to identify

feasible preserve sites, funding mechanisms, and management strategies for these preserves.

The County Board of Supervisors evaluated the preserve sites identified by the rare plant advisory committee and eliminated the large southern preserve site. It approved in principle two other large preserve sites and the two small satellite sites; however, the majority of the Board would not consider any local funding to establish or maintain the preserves (George Clark, *in litt.* 1993; Kirsten Tarp, U.S. Fish and Wildlife Service, pers. obs. 1993). The establishment and maintenance of a sufficient reserve system likely will not occur without adequate funding.

E. *Other natural or manmade factors affecting its continued existence.* Altered periodicity of fire (change in fire frequency) threatens *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens,* and *Senecio layneae.* These plants occur within a fire-adapted plant community, either within chaparral or on the ecotone between chaparral and woodland. Fire suppression policies have altered natural processes within several plant communities in California. Historically, fire occurred in chaparral on the average of 3 to 5 times every 100 years (Boyd 1985). As described below, fire is important for seed germination and seedling reestablishment by eliminating competition and shading, as well as replenishing nutrients to the soil. Without periodic fires, the previously mentioned four plants either do not reproduce by seed or may become shaded by other plants. In a study of the effects of controlled burning on three rare plants occurring on Pine Hill within western El Dorado County, Boyd (1985, 1987) found that fire killed *C. roderickii* shrubs, but caused a 22-fold increase in seed germination. He also found that the growth rate of seedlings was greater in the burned area than in the unburned area.

Fremontodendron californicum ssp. *decumbens* seeds require heat from fire to germinate. *Fremontodendron californicum* ssp. *decumbens* also resprouts vegetatively after a burn. In studying reproductive attrition in *F. californicum* ssp. *decumbens,* Boyd and Serafini (1992) found that seeds of *F. californicum* ssp. *decumbens* cannot successfully develop and germinate without the benefit of fire. They concluded that to maintain genetic diversity and establish plants at new localities within the boundaries of the current populations, sexual reproduction versus plant root sprouting may be necessary over long time periods. The authors further concluded that these goals could be accomplished by controlled burns.

Initial studies also show seeds of *Calystegia stebbinsii* need disturbance by either heat or scarification for germination (Tim Nosal, CDFG, pers. comm. 1993; Paul Boch, Nevada County Agricultural Commissioner, *in litt.*, 1993). *Calystegia stebbinsii* also is associated with fire. At the Nevada County landfill site, this species is more prevalent in the burned areas than in the unburned areas (Paul Boch, *in litt.* 1993). *Calystegia stebbinsii* is eliminated as soon as the surrounding chaparral grows tall enough to shade it.

Excessive fire frequency also potentially threatens *Ceanothus roderickii* and *Fremontodendron californicum* ssp. *decumbens.* These plants need sufficient time between burns to set enough seed to replenish the soil seedbank. Mature plants of *F. californicum* ssp. *decumbens* also need to build up carbohydrate reserves to be able to resprout after a fire (Boyd 1985).

The suppression of fire and other forms of disturbance threatens *Senecio layneae* and *Calystegia stebbinsii.* Limited surface disturbance is beneficial to these species in certain circumstances by promoting initial establishment (James Jokerst, pers. comm. 1993). *Senecio layneae* appears to be an early successional species that occupies temporary openings on gabbro-derived or serpentine and is eliminated as vegetation regrows in the openings (Baad and Hanna 1987).

Competition with invasive alien vegetation, herbicide spraying, and unauthorized dumping threaten individual occurrences of *Calystegia stebbinsii.* An introduced species of field bindweed, *Convolvulus* sp., competes with one colony of *C. stebbinsii* within Nevada County (CNDDB 1994). Trash dumping also threatens three occurrences of *C. stebbinsii* (CNDDB 1994). Herbicide spraying potentially threatens a significant portion of one occurrence of *C. stebbinsii* near Shingle Springs and several local occurrences adjacent to roads (Tim Nosal, pers. comm. 1993).

Herbicide spraying and trash dumping threaten one occurrence of *Ceanothus roderickii* (CNDDB 1994). Habitat degradation from garbage dumping on ridge-tops around Pine Hill degrades the habitat and is a minor threat to *Fremontodendron californicum* ssp. *decumbens* (James Wilson, Sierra College, pers. comm. 1993).

As discussed under Factor A, habitat fragmentation may alter the physical environment. Chaparral plants reportedly disappeared from fragments 10 to 100 ha (25 to 250 ac) in size due to persistent disturbance and potentially to change in fire frequency (Soulé *et al.* 1992). In addition, habitat fragmentation increases the risks of extinction due to environmental, demographic, or genetic random events.

Competition with invasive alien vegetation and shading from native tree and shrub species potentially threaten *Senecio layneae.* Several alien plant species, including *Cytisus scoparius* (Scotch broom), have become established within the Traverse Creek Botanical Area in Eldorado National Forest and potentially threaten this occurrence of *S. layneae* (Duron 1990, Pollak 1990).

One occurrence of *Senecio layneae* is thought to have been extirpated by roadside herbicide application (Oren Pollak, The Nature Conservancy, pers. comm. 1993). This activity may threaten several other occurrences of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to finalize this rule. Proposed residential and commercial development, and habitat fragmentation threaten all occurrences of *Calystegia stebbinsii, Ceanothus roderickii, Galium californicum* ssp. *sierrae,* and *Fremontodendron californicum* ssp. *decumbens* on the Pine Hill intrusion and adjacent serpentine formations in western El Dorado County. Changes in fire frequency threaten *C. stebbinsii, C. roderickii,* and *F. californicum* ssp. *decumbens,* throughout their respective ranges. *Senecio layneae* is threatened by development or habitat fragmentation throughout a portion of its range and by changes in fire frequency throughout its entire range. Road construction and maintenance, grading, unauthorized dumping, excessive grazing practices, herbicide spraying, off-road vehicle use, competition from invasive alien vegetation, shading by native vegetation, irrigation, and mining affect individual occurrences of the five taxa.

Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum ssp. *decumbens,* and *Galium californicum* ssp. *sierrae* are in danger of extinction throughout all or a significant portion of their ranges, and the final action, therefore, is to list them as endangered. Because of its wider distribution, *Senecio layneae* is not now in immediate danger of extinction throughout all or a significant portion of its range; however, unless current human population trends and development are reversed it is likely to become an endangered species in the

foreseeable future throughout all or a significant portion of its range. Therefore, the final action is to list *Senecio layneae* as threatened.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary determine critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens, Galium californicum* ssp. *sierrae,* and *Senecio layneae* at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Because the five plants face numerous human-caused threats (see Factors A and E in ''Summary of Factors Affecting the Species'') and the five occur predominantly on private land, the publication of precise maps and descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species and increase enforcement problems. The listing of these species as endangered and/or threatened also publicizes the rarity of these plants and, thus, can make these plants attractive to researchers, horticulturalists, or collectors of rare plants, as discussed under Factor B.

Protection of the habitat of these species will be addressed through the recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 80 percent of the occurrences for these five species are on privately owned lands. However, BLM manages land supporting populations of all five plants, and *Senecio layneae* occurs on Federal land managed by the Forest Service. Both agencies would become involved with any or all of these species as they are responsible for managing land use of areas supporting these species.

The Veterans Administration and the U.S. Department of Housing and Urban Development (Federal Home Administration loans) may become involved with these species through their administration of Federal mortgage programs. The construction and maintenance of roads and highways by the Federal Highway Administration, the relicensing of hydroelectric projects by the Federal Energy Regulatory Commission, and the contracting of surface waters for irrigation, industrial, or municipal uses by the Bureau of Reclamation would necessitate involvement with these species under the Act. Also, the Army Corps of Engineers could potentially become involved with these species through its permitting authority under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed threatened or endangered species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the importance of these resources. Therefore, the Army Corps of Engineers would be required to consult with the Service on any proposed dam construction or any proposed permits for fill operations that would adversely affect any of these plants.

Listing *Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum* ssp. *decumbens,* and *Galium californicum* ssp. *sierrae* as endangered and *Senecio layneae* as threatened provides for the development of a recovery plan(s), which will bring together State and Federal efforts for conservation of these plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of these species. Additionally, pursuant to section 6 of the Act, the Service would be more likely to grant funds to affected states for management actions aiding in the protection and recovery of these plants.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the

Act implemented by 50 CFR 17.61 for endangered plants, and 17.71, for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of any such species on areas under Federal jurisdiction and the removal, cutting, digging, or destroying of such plant species on any other area in knowing violation of any State law or regulation, including a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Less than 20 percent of the occurrences of the five species are on public (Federal) lands. Collection, damage, or destruction of these species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations or in violation of a State criminal trespass law. California requires a ten day notice be given before taking of plants on private land.

Activities that are unlikely to violate section 9 include horse paddocking and other grazing, clearing a defensible space for fire protection around personal residences, and landscaping, including irrigation around personal residences. Seeds from cultivated specimens of threatened plant taxa also are exempt from these prohibitions provided that a statement ''of cultivated origin'' appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few trade permits would ever be sought or issued for the five species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations regarding listed plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (phone 503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Kirsten Tarp, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under [FLOWERING PLANTS], to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Calystegia stebbinsii	Stebbins' morning-glory	U.S.A. (CA)	Convolvulaceae	E	596	NA	NA
*	*	*	*	*	*	*	
Ceanothus roderickii	Pine Hill ceanothus	U.S.A. (CA)	Rhamnaceae	E	596	NA	NA
*	*	*	*	*	*	*	
Fremontodendron californicum ssp. *decumbens*.	Pine Hill flannelbush	U.S.A. (CA)	Sterculiaceae	E	596	NA	NA
*	*	*	*	*	*	*	
Galium californicum ssp. *sierrae*.	El Dorado bedstraw	U.S.A. (CA)	Rubiaceae	E	596	NA	NA
*	*	*	*	*	*	*	
Senecio layneae	Layne's butterweed	U.S.A. (CA)	Asteraceae	T	596	NA	NA
*	*	*	*	*	*	*	

Dated: September 23, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–26740 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 61, No. 203
Friday, October 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–258–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 Series Airplanes (Including Major Variants C29A, U125, and U125A Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Beech (Raytheon) Model BAe 125–1A through-1000A series airplanes and Model Hawker 800 and 1000 airplanes, that currently requires repetitive inspections to detect fatigue cracking of the sidestay jack pivots of the main landing gear (MLG), and replacement of the sidestay jack pivot assemblies with new assemblies. This action would add a requirement to replace the sidestay jack pivot assemblies with new, improved assemblies; when accomplished, this replacement would terminate the inspection requirements of the AD. This proposal also would expand the applicability of the existing AD to include additional airplanes. The actions specified by this proposed AD are intended to prevent fatigue fracturing of the sidestay jack pivots of the MLG, which could result in the inability of the MLG to deploy and a consequent wheels-up landing.

DATES: Comments must be received by November 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–258–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–258–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–258–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 21, 1994, the FAA issued AD 94–26–12, amendment 39–9107 (60 FR 330, January 4, 1995), applicable to Beech (Raytheon) Model BAe 125–1A through-1000A series airplanes and Model Hawker 800 and 1000 airplanes equipped with main landing gear (MLG) sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed. That AD requires a detailed visual inspection to detect cracking of the sidestay jack pivots of the MLG and repair, if necessary. In addition, that AD requires eventual replacement of the sidestay jack pivot assemblies with new assemblies. The critical fatigue load on the sidestay jack pivot occurs during the deployment and retraction of the MLG. That action was prompted by a report of fracturing of a jack pivot, which resulted in the inability of the MLG to deploy. The requirements of that AD are intended to prevent a wheels-up landing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has issued Service Bulletin SB 32–233, Revision 2, dated July 28, 1995, which adds certain major variant airplanes to the effectivity listing of the service bulletin. Because these variant airplanes perform a greater number of deployments and retractions of the MLG than other airplanes, the sidestay jack pivots are exposed to more fatigue cycles per flight. Consequently, the service bulletin recommends a reduction of the inspection threshold and repetitive inspection intervals for these airplanes until replacement with new, improved sidestay jack pivot assemblies is accomplished.

This service bulletin also describes a schedule to replace the sidestay jack pivots with new, improved assemblies for certain airplanes on which Modification 252091 (the installation of a steel pivot with an eccentric bush) was installed after June 23, 1994. Those assemblies installed after June 23, 1994, were manufactured with a defective

surface finish. Identification of the installation date of the assembly is the only way to determine if the assembly was manufactured with the defective surface finish.

Additionally, the manufacturer has issued Service Bulletin SB. 32–233–3597A, dated July 28, 1995. This service bulletin describes procedures for replacement of the sidestay jack pivot assembly with a new, improved assembly. The new sidestay jack pivot assembly has an increased radii and local shot peening to further improve the fatigue performance. Accomplishment of this replacement eliminates the need for repetitive inspection and replacement of the sidestay jack pivot assemblies with the existing assemblies.

The Civil Aviation Authority (CAA) classified both of these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–26–12 to continue to require inspections to detect cracking of the sidestay jack pivots of the MLG for certain airplanes until the replacement of the sidestay jack pivot assemblies with new, improved assemblies is accomplished. The proposed AD would expand the applicability of the existing AD to include additional airplanes. It also would require installation of new, improved sidestay jack pivot assemblies, which would constitute terminating action for the inspection requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between AD 94–26–12 and the Proposed Rule

Operators should note that, although AD 94–26–12 permits continued flight with a single crack less than a certain length, and requires repetitive inspections not to exceed every 100 landings, this proposed AD would require that all cracked sidestay jack pivot assemblies be replaced with the new, improved assemblies within a specific amount of time. The maximum limits for cracking allowed, as recommended in the Beech (Raytheon) service bulletin (0.3 inch or 0.12 inch, depending on the crack location), are at the limits of what can be reliably detected using an ''on-airplane'' visual inspection procedure. The FAA finds that the safety implications and consequences associated with cracking of the sidestay jack pivot prohibit continued flight past 100 landings after the detection of any cracking. Additionally, the sidestay jack pivot assembly is easily replaced with the new, improved assembly, and the replacement will terminate the requirements for repetitive inspections of the existing sidestay jack pivot assemblies.

Clarification of Applicability

Beech (Raytheon) Model BAe 125 series 800B and 1000B airplanes are similar in design to the airplanes affected by this proposed rule; however, those models have not yet been certificated for operation in the United States. Therefore, a note has been included in this proposed rule to clarify this and to suggest that airworthiness authorities of countries in which Model BAe series 800B and 1000B are approved for operation consider adopting corrective action that is similar to that proposed in this AD action.

Cost Impact

There are approximately 550 Beech (Raytheon) Model BAe 125–1 through 1000A series airplanes and Model Hawker 1000 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 94–26–12 take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The manufacturer is currently supplying required parts at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $198,000, or $360 per airplane, per inspection cycle.

The new (replacement) actions that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,200 per airplane. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $792,000, or $1,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9107 (60 FR 330, January 4, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Beech (Raytheon): Docket 95–NM–258–AD. Supersedes AD 94–26–12, Amendment 39–9107.

Applicability: Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes (including major variants C29A, U125, and U125A series airplanes); equipped with main landing gear (MLG) sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed; 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 otherwise 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 (f) 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.

Note 2: Beech (Raytheon) Model BAe 125 series 800B and BAe 125–1000B airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125 series 800B and BAe 125–1000B airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the MLG to deploy and a consequent wheels-up landing, accomplish the following:

Note 3: Paragraph (a) of this AD restates the requirements of AD 94–26–12. As allowed by the phrase, ''unless accomplished previously,'' if the initial inspection required by that AD has been accomplished previously, paragraph (a) of this AD does not require that initial inspection to be repeated.

(a) For Beech (Raytheon) Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125–1A through—1000A series airplanes equipped with MLG sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed, except for airplanes as specified in paragraph (d) of this AD: Perform a detailed visual inspection, using a 10X magnifier, to detect cracking of the sidestay assembly jack pivot of the left and right MLG, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994; Revision 1, dated July 8, 1994; or Revision 2, dated July 28, 1995; at the latest of the times specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Within 28 days after February 3, 1995 (the effective date of AD 94–26–12, Amendment 39–9107); or

(2) Prior to the accumulation of 3,000 total landings on the sidestay assembly since new; or

(3) Prior to the accumulation of 1,000 total landings since overhaul of the sidestay assembly.

(b) For Beech (Raytheon) Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125–1A through –1000A series airplanes equipped with MLG sidestay assemblies on which Post-Mod 252091 steel jack pivots (part numbers 25UM1199A 25UM1229A, and 258UM87–1A) have been installed prior to June 24, 1994, except for airplanes as specified in paragraph (d) of this AD:

(1) If no cracks are found during the inspection required by paragraph (a) of this AD, and the sidestay assembly has been overhauled prior to the accomplishment of the inspection, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD at the times specified.

(i) Repeat the inspection specified in paragraph (a) of this AD within 1,000 landings after accomplishing the initial inspection, and thereafter at intervals not to exceed 1,000 landings, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994; Revision 1, dated July 8, 1994; or Revision 2, dated July 28, 1995.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was new or last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new, improved assembly, in accordance with Raytheon Corporate Jets Service Bulletin SB.32–233–3597A, dated July 28, 1995. Accomplishment of this replacement constitutes terminating action for the inspection requirements of this AD.

(2) If no cracks are found during the inspection required by paragraph (a) of this AD, and the sidestay assembly has not been overhauled prior to accomplishment of that inspection: Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new, improved assembly, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, Revision 2, dated July 28, 1995. Accomplishment of this replacement constitutes terminating action for the inspection requirements of this AD.

(c) For Beech (Raytheon) Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125–1A through –1000A series airplanes equipped with MLG sidestay assemblies on which Post-Mod 252091 steel jack pivots (part numbers 25UM1199A 25UM1229A, and 258UM87–1A) have been installed on June 24, 1994, or later, except for airplanes as specified in paragraph (d) of this AD: Replace the jack pivot assembly with a new, improved assembly in accordance with Raytheon Corporate Jets Service Bulletin SB.32–233–3597A, dated July 28, 1995, at the later of the times specified in paragraph (c)(1) or (c)(2) of this AD. Accomplishment of this replacement constitutes terminating action for the inspection requirements of this AD.

(1) Prior to the accumulation of 2,000 total landings since installation of Post Mod 252091 steel jack pivots. Or

(2) Within 1,000 landings after the effective date of this AD.

(d) For all Beech (Raytheon) Model BAe 125 Series 800A C29A, U125, and Hawker 800 U125A airplanes on which Post Mod 252091 steel jack pivots (part numbers 25UM1199A, 25UM1229A, and 258UM87–1A) have been installed: Accomplish paragraphs (d)(1) and (d)(2) of this AD at the times specified in those paragraphs.

(1) Perform a detailed visual inspection, using a 10X magnifier, to detect cracking of the sidestay assembly jack pivot of the left- and right-hand MLG, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, Revision 2, dated July 28, 1995, at the later of the times specified in paragraph (d)(1)(i) or (d)(1)(ii) of this AD. Thereafter, repeat this inspection at intervals not to exceed 200 landings, until the requirements of paragraph (d)(2) of this AD are accomplished.

(i) Prior to the accumulation of 1,200 total landings since the installation of a steel jack pivot (Post Mod 252091). Or

(ii) Within 56 days or within 200 landings after the effective date of this AD, whichever occurs first.

(2) Prior to the accumulation of 2,000 total landings on the jack pivot, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the sidestay jack pivot assembly with a new, improved assembly (part numbers 25UM1335–1A and 25–8UM173–1A) in accordance with Raytheon Corporate Jets Service Bulletin SB.32–233–3597A, dated July 28, 1995. Accomplishment of this replacement constitutes terminating action for the inspection requirements of this AD.

(e) If any crack is detected during any inspection required by this AD, replace the sidestay jack pivot assembly with a new, improved assembly (part numbers 25UM1335–1A and 25–8UM173–1A) in accordance with Raytheon Corporate Jets Service Bulletin SB.32–233–3597A, dated July 28, 1995, at the time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. Accomplishment of this replacement constitutes terminating action for the inspection requirements of this AD.

(1) For airplanes on which a crack is detected that does not exceed the limits specified in the service bulletin, replace the assembly at the later of the times specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD.

(i) Within 100 landings after the effective date of this AD. Or

(ii) Within 100 landings after the initial detection of the cracking.

(2) For airplanes on which a crack is detected that exceeds the limits specified in the service bulletin, prior to further flight, replace the assembly in accordance with the service bulletin.

(f) 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 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch.

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

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

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26710 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–51–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require modification of the left and right elevators, and replacement of the elevator spring with a stiffer spring. This proposal is prompted by reports indicating that water and ice have accumulated at the trailing edge of the left and right elevators; this accumulation can cause the elevators to become unbalanced, and oscillate or flutter. The actions specified by the proposed AD are intended to prevent this oscillation or flutter. Elevator oscillation, if not corrected, could result in reduced controllability of the airplane. Elevator flutter, if not corrected, could couple with the natural vibrations of the airplane, and result in loss of the airplane's structural integrity.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–51–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that it has received reports indicating that water and ice have accumulated at the trailing edge of the left and right elevators; this accumulation can cause the elevators to become unbalanced, and to oscillate or flutter. Reduced controllability is a consequence of steady elevator oscillation which could cause uncommanded pitch (rising and falling movements) of the airplane. Reduced structural integrity of the airplane can occur if divergent elevator flutter is coupled with natural vibrations of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin SB.55–014–01510A, dated December 15, 1995, which describes procedures for modification of the left and right elevators by installing mass balance weights at the leading edge of the horn, forward of the hinge line, to counteract the effect of accumulated water and ice on the trailing edge of the elevator.

The manufacturer also has issued British Aerospace Service Bulletin SB.27–150–01510B, dated December 15, 1995, which describes additional procedures for modification of the left and right elevators by replacing the elevator spring with a stiffer spring. With the addition of mass balance weights to the elevators, a stiffer spring holds down the increased weight, and makes it easier for the pilot to conduct full movement and free movement checks of the elevators when the airplane is on the ground.

The CAA classified both service bulletins as mandatory and issued British airworthiness directive 002–12–95, dated January 31, 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has

kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the left and right elevators by installation of mass balance weights at the leading edge of the horn, forward of the hinge line; and replacement of the elevator spring with a stiffer spring. The actions would be required to be accomplished in accordance with the service bulletins described previously.

On August 15, 1995, the FAA issued AD 95–17–13, amendment 39–9343 (60 FR 44417, August 28, 1995). [A correction of the rule was published in the Federal Register on October 26, 1995 (60 FR 54800).] That AD requires operators of British Aerospace Model BAe 146 and Avro 146–RJ airplanes to modify the left and right elevators to improve water drainage, and thereby help maintain the balance of the elevators. That modification involves, among other actions, drilling new drain holes, applying sealant, and plugging drain holes on certain airplanes. The FAA determined that action to be interim action until further action is identified.

Accomplishment of the actions required by this proposed AD would be the next step in eliminating the accumulation of ice and water in the left and right elevators. This action also would be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Difference Between the Proposed Rule and CAA Airworthiness Directive

The proposed AD and the parallel CAA airworthiness directive differ on compliance times: the proposed AD would require the actions to be completed within 12 months after the effective date of the AD; the CAA mandates an 18-month period. In developing a compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification and part replacement. After evaluating these factors, the FAA determined that a 12-month compliance time is appropriate.

Cost Impact

The FAA estimates that 52 British Aerospace Model BAe 146 and Avro 146–RJ series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $700 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $73,840, or $1,420 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 96–NM–51–AD.

Applicability: All Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 the left and right elevators from oscillating or fluttering, which could result in either reduced controllability of the airplane, or loss of the airplane's structural integrity, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the left and right elevators by installing mass balance weights at the leading edge of the horn, forward of the elevator hinge line, in accordance with British Aerospace Service Bulletin SB.55–014–01510A, dated December 15, 1995. And

(2) Replace the left and right elevator spring with a stiffer spring, in accordance with British Aerospace Service Bulletin SB.27–150–01510B, dated December 15, 1995.

(b) As of 12 months after the effective date of this AD, no person shall install on any airplane an elevator that has not been modified in accordance with paragraph (a) of this AD.

(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.

Issued in Renton, Washington, on October 9, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26708 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–242–AD]

RIN 2120–AA64

Airworthiness Directives; Airtell International, Inc., Centaurus Model C3–100 Ground Proximity Warning System (GPWS), as Installed in Various Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airtell International, Inc., Centaurus Model C3–100 GPWS equipment that is installed on any type of airplane. This proposal would require replacement of this equipment with a similar type of equipment that meets specific performance requirements. This proposal is prompted by results of an investigation, which revealed that, under certain circumstances, the Centaurus GPWS equipment does not provide the flight crew with aural warnings to indicate that the airplane is descending. The actions specified by the proposed AD are intended to prevent failure of the GPWS equipment to provide such aural warnings. If the flight crew relies on receiving such warnings and the GPWS equipment fails to provide those warnings, the ability of the flight crew to prevent the airplane from impacting the ground may be inhibited.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposal may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John P. Dimtroff, Aerospace Engineer, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2117; fax (206) 227–1100.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–242–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Section 135.153 of the Federal Aviation Regulations (14 CFR 135.153) specifies that no turbine-powered airplane having a passenger seating configuration (excluding any pilot seat) of 10 or more seats may be operated unless the airplane is equipped with an approved ground proximity warning system (GPWS). In order to be considered approved, GPWS equipment must meet certain minimum performance standards prescribed in Technical Standard Order (TSO) C–92b, dated August 19, 1976. That TSO references Radio Technical Commission for Aeronautics (RTCA) Document No. DO–161A, ''Minimum Performance Standards, Airborne Ground Proximity Warning Equipment,'' dated May 27, 1976, as an additional source of information. The RTCA document indicates that the minimum performance standards are a means of ensuring that GPWS equipment will satisfactorily perform its intended function under all conditions normally encountered in routine aeronautical operations.

The FAA has received reports indicating that Centaurus Model C3–100 GPWS equipment, which is installed in various transport, commuter, and normal category airplanes, does not meet the minimum performance standards prescribed in TSO C–92b.

GPWS Equipment, in General

The GPWS equipment is an aid to the flight crew for determining the imminent occurrence of inadvertent contact of the airplane with the ground. This equipment is intended to supplement flight instrument data, which alerts the flight crew that inadvertent contact with the ground may occur. The GPWS equipment must provide indications of proximity to the ground in the following modes of aircraft operation:

Mode 1. Excessive rates of descent;

Mode 2. Excessive closure rate to terrain;

Mode 3. Negative climb rate or altitude loss after takeoff;

Mode 4. Flight into terrain when not in landing configuration; and

Mode 5. Excessive downward deviation from an instrument landing system (ILS) glide slope.

Distinctive aural warnings must be provided for Modes 1 through 4 above. The aural warning for these modes must consist of the sound ''Whoop-Whoop,'' followed by either ''Pull Up'' or ''Terrain'' (or other acceptable annunciation), which is repeated until the hazardous condition no longer exists.

Results of FAA Testing

Subsequent to the reports discussed previously, the FAA conducted testing of two Centaurus Model C3–100 GPWS

units in accordance with RTCA Document No. DO–161A. Results of that testing confirmed that Centaurus Model C3–100 GPWS equipment does not meet all minimum performance standards specified in TSO C–92b and RTCA Document No. DO–161A. Specifically, failures occurred in Mode 2 (excessive descent rate) and Mode 3 (descent after takeoff) of aircraft operation.

The FAA has determined that the effect of the deficiencies found in Modes 2 and 3 could result in an unsafe condition. Those deficiencies are as follows:

1. Mode 2A2. Using a start altitude of 2,450 feet, the FAA tested the GPWS equipment and listened for aural warnings issued at terrain closure rates from 2,500 to 7,000 feet per minute (fpm). At closure rates of 3,750 fpm and below, no warnings were received within the acceptable range. Warnings were issued at parameters outside specified minimum performance requirements.

2. Mode 2A4. Using a start altitude of 2,450 feet, the FAA tested the GPWS equipment and listened for warnings issued at terrain closure rates from 2,500 to 7,000 fpm. Valid warnings were received at closure rates within the acceptable band until descent rates decreased to less than 3,500 fpm. Descent rates of less than 3,500 fpm yielded alarms outside the prescribed minimum performance requirements.

3. Mode 2B1. Using a start altitude of 2,450 feet, the FAA tested the GPWS equipment and listened for warnings issued at terrain closure rates from 2,500 to 7,000 fpm. Valid warnings were received at closure rates within the acceptable band until descent rates decreased to less than 3,200 fpm. Descent rates of less than 3,200 fpm yielded alarms outside the prescribed minimum performance requirements.

4. Mode 3B. Simulating takeoff from zero feet radio altitude to 700 feet, the BARO rate (altitude loss) parameter was increased in 20-foot increments from 20 to 140 feet, and then to 500 and 1,000 feet. After numerous attempts, valid results could not be obtained, i.e., neither unit tested issued a warning at 140 feet (or less) altitude loss. At an altitude loss value above 140 feet, warnings were noted; however, these warnings were intermittent at times.

FAA's Findings

Concerning Mode 2, the FAA finds that Centaurus Model C3–100 GPWS equipment does not provide the flight crew with appropriate aural warnings of encroaching terrain when the rate of descent of the airplane is 3,750 feet per minute or less at altitudes of 1,000 feet or below.

In addition, regarding Mode 3, when an airplane is descending after takeoff, Centaurus Model C3–100 GPWS equipment does not provide an aural warning (''DON'T SINK'') when a barometric altitude loss of 140 feet or less is encountered to indicate that the airplane is descending after takeoff.

FAA's Conclusions

It is reasonable to assume that flight crews may come to rely on the aural warnings that should be provided by GPWS equipment during Modes 2 and 3 of aircraft operation. If the flight crew relies on receiving such warnings and the GPWS equipment fails to provide those warnings, the ability of the flight crew to prevent the airplane from impacting the ground may be inhibited.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require removal and replacement of Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets specific performance requirements. The actions would be required to be accomplished in accordance with a method approved by the FAA.

It also may be possible to correct the addressed unsafe condition by modifying the unit. However, the FAA has not identified any particular means by which such a modification may be accomplished. The FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of this proposed AD, provided that adequate justification is presented to support such a request.

Cost Impact

The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $16,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $516,000, or $17,200 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airtell International, Inc.: Docket 96–NM–242–AD.

Applicability: Centaurus Model C3–100 ground proximity warning system (GPWS) equipment, as installed in, but not limited to, the following airplanes, certificated in any category:

Beech 99 series airplanes;
Beech 200 series airplanes;
Dassault Aviation Model Mystere-Falcon 200 series airplanes;
EMBRAER (Empresa Brasileira de Aeronautica S.A.) EMB–110 series airplanes;

Fairchild Aircraft Model SA226–TC series airplanes;
Fairchild Aircraft Model SA227–AT series airplanes; and
Grumman Model G–73 Mallard airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the GPWS equipment to provide certain aural warnings, which could inhibit the ability of the flight crew to prevent the airplane from impacting the ground, accomplish the following:

(a) Within 60 days after the effective date of this AD, remove and replace Centaurus Model C3–100 GPWS equipment with a similar type of equipment that meets minimum performance standards specified in Technical Standard Order (TSO) C–92b, dated August 19, 1976. Accomplish the actions in accordance with a method approved by the Manager, Flight Test and Systems Branch, ANM–111, FAA, Transport Airplane Directorate.

(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, Flight Test and Systems Branch, ANM–111. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Flight Test and Systems Branch, ANM–111.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Flight Test and Systems Branch, ANM–111.

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

Issued in Renton, Washington, on October 9, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26707 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–26–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that currently require inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts, if necessary. Those actions were prompted by reports of cracking in the main fittings of the NLG. This action would require that, for certain airplanes, the inspections be accomplished at reduced intervals. This proposal is prompted by the results of new analyses of the cracking that were conducted by the manufacturer of the NLG. The actions specified by the proposed AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–26–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 1993, the FAA issued AD 93–17–04, amendment 39–8674 (58 FR 47036, September 7, 1993), applicable to British Aerospace Model BAe 146 series airplanes, to require repetitive inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts, if necessary. That action was prompted by reports of cracking of the upper main fitting of the NLG. The requirements of that AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

On February 15, 1995, the FAA issued AD 95–04–06, amendment 39–9158 (60 FR 12413, March 7, 1995), applicable to British Aerospace Model Avro 146–RJ series airplanes. That AD is similar to AD 93–17–04 in that it requires repetitive inspections to detect cracking of the upper main fitting of the NLG, and replacement or repair of cracked parts, if necessary. Likewise, that action was prompted by reports of cracking of the upper main fitting of the NLG. The requirements of that AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

Action Since Issuance of Previous AD's

Since the issuance of those AD's, a fatigue analysis and a review of the service reports were conducted by the manufacturer of the NLG. The results of the analysis and review indicate that crack growth can occur at a faster rate than what was considered previously. The repetitive inspection interval should be reduced for NLG part number

200876001 or 200876003 from 4,000 landings to 2,000 landings. The results of the review and analysis also indicated that the current repetitive inspection interval of 8,000 landings is adequate for NLG part numbers 200876002, 200876004, and 201138002.

Explanation of Relevant Service Information

Subsequent to the fatigue analysis and review of the service reports, British Aerospace issued Service Bulletin S.B. 32–131, Revision 3, dated October 18, 1995, which describes procedures for either an eddy current or ultra sensitive penetrant inspection of the NLG to detect cracking, and replacement or repair of cracked parts, if necessary. (The service bulletin also references Messier-Dowty Service Bulletin, Revision 2, dated August 2, 1995, as an additional source of service information.) The CAA classified the British Aerospace service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93–17–04 and AD 95–04–06 to continue to require either eddy current or ultra sensitive penetrant inspections to detect cracking of the upper main fitting of the NLG, and replacement or repair of cracked parts, if necessary. Although the inspections required by this proposal are the same as the inspections required by AD 93–17–04 and AD 95–04–06, this proposal would combine the requirements of the previous AD's, but require that the repetitive inspection interval for certain airplanes (equipped with certain NLG part numbers) would occur more frequently. The actions would be required to be accomplished in accordance with the British Aerospace service bulletin described previously.

Cost Impact

There are approximately 52 Model BAe 146 and Model Avro 146–RJ series airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 93–17–04 and AD 95–04–06, and retained in this proposal, take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $9,360, or $180 per airplane, per inspection cycle.

Although this proposal adds no new actions, the associated costs for some operators would increase somewhat since certain inspections would be required to be performed more frequently.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8674 (58 FR 47036, September 7, 1993), and amendment 39–9158 (60 FR 12413, March 7, 1995), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace Regional Aircraft Limited, AVRO International: Docket 96–NM–26–AD. Supersedes AD 93–17–04, Amendment 39–8674; and AD 95–04–06, Amendment 39–9158.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) 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 failure of the main fitting, which could lead to collapse of the nose landing gear (NLG) during landing, accomplish the following:

Restatement of Continuing Requirements

(a) For all Model BAe 146 series airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after October 7, 1993 (the effective date of AD 93–17–04, Amendment 39–8674), whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992;

Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(b) For all Model Avro 146–RJ series airplanes on which NLG part number 200876002, 200876004, or 201138002 has been installed:

(1) Prior to the accumulation of 16,000 total landings or within 30 days after April 6, 1995 (the effective date of AD 95–04–06, Amendment 39–9158), whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 8,000 landings.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 8,000 landings.

(c) For all Model BAe 146 series airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after October 7, 1993 (the effective date of AD 93–17–04, Amendment 39–8674), whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(d) For all Model Avro 146–RJ series airplanes on which NLG part number 200876001 or 200876003 has been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after April 6, 1995 (the effective date of AD 95–04–06, Amendment 39–9158), whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, dated December 6, 1991; Revision 1, dated November 12, 1992; Revision 2, dated July 10, 1993; or Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. After replacement or repair, repeat the inspection at intervals not to exceed 4,000 landings until the inspection required by paragraph (e) of this AD is accomplished.

New Requirements

(e) For all Model BAe 146 and Avro 146–RJ series airplanes on which NLG part number 200876001 or 200876003 has been installed: Within 2,000 landings from the immediately preceding inspection conducted in accordance with paragraph (c) or (d) of this AD, or within 3 months after the effective date of this AD, whichever occurs later, accomplish the following:

(1) Conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace Service Bulletin S.B. 32–131, Revision 3, dated October 18, 1995. Repeat the inspection thereafter at intervals not to exceed 2,000 landings. Accomplishment of this inspection terminates the requirements of paragraph (c) and (d) of this AD.

Note 2: The British Aerospace service bulletin references a Messier-Dowty Service Bulletin 145–32–109, Revision 2, dated August 2, 1995, as an additional source of service information.

(2) If cracking is detected during any inspection required by this paragraph, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack, in accordance with a method approved by the Manager, Standardization Branch, ANM–113. After replacement or repair, repeat the inspection at intervals not to exceed 2,000 landings.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on October 9, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26706 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Corporation (Formerly Beech Aircraft Corporation) Model 76 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 91–14–14, which currently requires repetitively inspecting the main landing gear (MLG) ''A'' frame assemblies for cracks on Raytheon Aircraft Corporation (Raytheon) Model 76 airplanes, and replacing any assembly found cracked. Reports of fatigue cracks developing on the MLG ''A'' frame assemblies of the affected airplanes prompted AD 91–14–14. Raytheon has developed improved design MLG ''A'' frame assemblies, and the Federal Aviation Administration (FAA) has determined that Model 76 airplanes with an improved design ''A'' frame assembly installed on both the left and right MLG should be exempt from AD 91–14–14. This proposed action retains the requirement of repetitively inspecting the MLG ''A'' frame assemblies for cracks and replacing any cracked ''A'' frame assembly only for those Model 76 airplanes that do not have the improved design parts installed. The actions specified by the proposed AD are intended to prevent MLG failure because of a cracked ''A'' frame assembly, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before December 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 94–CE–34–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–14–14, Amendment 39–7055 (56 FR 29173, June 26, 1991), currently requires repetitively inspecting the main landing gear (MLG) ''A'' frame assemblies for cracks on Raytheon Model 76 airplanes, and replacing any MLG ''A'' frame assembly found cracked. Accomplishment of the inspections required by AD 91–14–14 is in accordance with Beech Service Bulletin (SB) No. 2361, dated February 1991.

Reports of fatigue cracks developing on the MLG ''A'' frame assemblies of the affected airplanes prompted AD 91–14–14. Since the issuance of AD 91–14–14, Raytheon has developed improved design MLG ''A'' frame assemblies, part number (P/N) 105–810023–75 (left) and P/N 105–810023–76 (right).

Applicable Service Information

Raytheon has revised SB No. 2361 to the Revision III level (dated June 1996). This SB revision specifies procedures for inspecting the MLG ''A'' frame assemblies for cracks, and introduces the improved design MLG ''A'' frame assemblies, P/N 105–810023–75 (left) and P/N 105–810023–76 (right).

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that (1) Raytheon Model 76 airplanes incorporating an improved MLG ''A'' frame assembly on both the left and right MLG should be exempt from the inspections currently required by AD 91–14–14; and (2) AD action should be taken to prevent MLG failure because of a cracked ''A'' frame assembly, which could result in loss of control of the airplane during landing operations.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model 76 airplanes of the same type design, the proposed AD would supersede AD 91–14–14 with a new AD. The proposed action would retain the requirement of repetitively inspecting the MLG ''A'' frame assemblies for cracks and replacing any part found cracked, but would exempt those airplanes with both a P/N 105–810023–75 (left) and P/N 105–810023–76 (right) MLG ''A'' frame assembly installed. Accomplishment of the proposed repetitive inspections would be in accordance with Beech SB No. 2361, Revision III, dated June 1996.

Cost Impact

The FAA estimates that 437 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,440. This figure only takes into account the cost of the proposed initial inspection; repetitive inspection costs and costs for replacing any cracked MLG ''A'' frame assemblies are not included in this figure. The FAA has no way of determining how many airplanes would have cracked MLG ''A'' frame assemblies or how many repetitive inspections each affected owner/operator would incur over the life of the airplane.

The only difference between the proposed AD and AD 91–14–14 is that the proposed AD would exempt airplanes with the improved MLG ''A'' frame assemblies installed. Therefore, the cost impact of the proposed AD is less than that already required by AD 91–14–14 because some airplanes will have the improved MLG ''A'' frame assemblies installed.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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 removing Airworthiness Directive (AD) 91–14–14, Amendment 39–7055 (56 FR 29173, June 26, 1991), and by adding a new AD to read as follows:

Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation): Docket No. 94–CE–34–AD; Supersedes AD 91–14–14, Amendment 39–7055.

Applicability: Model 76 airplanes (serial numbers ME–1 through ME–437), certificated in any category, that do not have both a part number (P/N) 105–810023–75 (left) and P/N 105–810023–76 (right) main landing gear (MLG) ''A'' frame assembly installed.

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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 91–14–14), and thereafter at intervals not to exceed 100 hours TIS .

To prevent MLG failure because of a cracked ''A'' frame assembly, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect, using both visual and dye penetrant methods, both the left and right MLG ''A'' frame assemblies for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin No. 2361, Revision III, dated June 1996. Pay particular attention to the tips of the gussets and the small corrosion treatment hole adjacent to the gusset.

(b) If any MLG ''A'' frame assembly is found cracked during any inspection required by this AD, prior to further flight, replace the assembly with one of the following in accordance with Chapter 32 of the Raytheon Model 76 Maintenance Manual:

(1) A new MLG ''A'' frame assembly with the same P/N as that found cracked. The 100-hour TIS repetitive inspection requirement still applies when this design ''A'' frame is installed.

(2) A P/N 105–810023–75 (left) or P/N 105–810023–76 (right) main MLG ''A'' frame assembly, as applicable. Repetitive inspections are no longer required on an MLG ''A'' frame assembly incorporating this design configuration. Repetitive inspections are still required on an MLG ''A'' frame assembly if it does not incorporate this improved design configuration.

(c) Installing both P/N 105–810023–75 (left) and P/N 105–810023–76 (right) MLG ''A'' frame assemblies eliminates the repetitive inspection requirement of this AD.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 91–14–14, Amendment 39–7055.

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

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26704 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Air Tractor, Inc. (Air Tractor) Models AT–802 and AT–802A airplanes. The proposed action would require revising the Airworthiness Limitations section of the applicable maintenance manual to change the life limit of the tail landing gear spring. Results from a routine analysis of the life-limited parts of the affected airplanes prompted the proposed AD. In particular, the tail landing gear spring life limit is not consistent with that called out for the main landing gear spring. The actions specified by the proposed AD are intended to prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane.

DATES: Comments must be received on or before December 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–48–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Air Tractor, Inc., P. O. Box 485, Olney, Texas 76374; telephone (817) 564–5616; facsimile (817) 564–2348. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–48–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–48–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Routine analysis of the life-limited parts on Air Tractor Models AT–802 and AT–802A airplanes reveals that the life limit of the tail landing gear spring is not consistent with that called out for the main landing gear spring. Specifically, the tail landing gear spring life limit was only related to hours time-in-service (TIS) and was not tied to landings. When adjusting the life limit of the tail landing gear spring to landings as well as hours TIS, the FAA noticed that the hours TIS life limit for this part is not consistent with that of the main landing gear spring; the life limit of the tail landing gear spring is currently 3,500 hours TIS and should be 3,000 hours TIS to be consistent with the main landing gear spring.

Applicable Maintenance Manual Revision

Air Tractor has revised Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual. This revision changes the life limit of the tail landing gear spring from 3,500 hours TIS to 3,000 hours TIS and includes 8,000 landings (the life limit being that which comes first). This revision is dated May 24, 1996.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the situation described above, the FAA has determined that (1) the life limit of the tail landing gear spring should be changed; and (2) AD action should be taken to prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Models AT–802 and AT–802A airplanes of the same type design, the proposed AD would require revising the Airworthiness Limitations section of the applicable maintenance manual to change the life limit of the tail landing gear spring. The proposed revision would be accomplished by incorporating the revision to Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual, dated May 24, 1996.

Cost Impact

The FAA estimates that 37 airplanes in the U.S. registry would be affected by the proposed AD. An owner/operator of one of the affected airplanes holding at least a private pilot certificate would be allowed to incorporate the manual revision as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). With this in mind, the only impact the proposed AD would have upon U.S. owners/operators of the affected airplanes would be the time it would take the individual owners/operators of the affected airplanes to incorporate the proposed manual revision.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Air Tractor, Inc.: Docket No. 96–CE–48–AD.

Applicability: Models AT–802 and AT–802A airplanes (serial numbers 0001 through 0038), 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 within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane, accomplish the following:

(a) Incorporate the revision to Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual, dated May 24, 1996.

(b) Incorporating the maintenance manual revision as required by paragraph (a) of this AD may be performed by the airplane owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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) An alternative method of compliance or adjustment of the compliance times that

provides an equivalent level of safety may be approved by the Manager, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(e) All persons affected by this directive may obtain copies of the maintenance manual revision referred to herein upon request to Air Tractor Inc., P. O. Box 485, Olney, Texas 76374; or may examine this information at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26700 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Corporation (Formerly Beech Aircraft Corporation) 35 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) 35 series airplanes. The proposed action would require inspecting the ruddervator differential tail control rod assembly for corrosion or cracks, repairing or replacing any cracked or corroded part, and applying anti-corrosion sealant to the ruddervator control pushrods. The proposed action results from a split in the ruddervator control push rod on an affected airplane that was found during a routine inspection. The split occurred when water froze in the internal area of the control push rod and then expanded. The actions specified by the proposed AD are intended to prevent failure of the differential tail control rod assembly, which could result in loss of control of the airplane.

DATES: Comments must be received on or before December 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–44–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–44–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–44–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of the ruddervator control pushrod splitting on a Raytheon 35 series airplane; specifically a ¾-inch longitudinal split was found in the left ruddervator control pushrod. The splitting is attributed to water freezing in the internal area of the control push rod.

The design of the ruddervator differential tail control rod assembly is that the two rods have a hollow shaft that is open at both ends and extends through the length of the rod. Moisture laden air is entering the rod assembly through these hollow shafts and then condenses in the rod assembly tube. When the moisture accumulates, it freezes in cold weather, expands, and causes the ruddervator control pushrod to split. This condition could lead to failure of the ruddervator differential tail control rod asssembly and subsequent loss of control of the airplane.

Applicable Service Information

Raytheon has issued Service Bulletin (SB) No. 2668, dated September 1996, which specifies procedures for inspecting the ruddervator differential tail control rod assembly, and repairing or replacing any cracked part. Raytheon SB No. 2668 also specifies procedures for applying an anti-corrosion sealant to the ruddervator control pushrods. This service bulletin applies to certain serial numbers (D–1 through D10403, D–15001, and D–15002) of the following models of Raytheon 35 series airplanes:

35	35R	A35	B35
C35	D35	E35	F35
G35	H35	J35	K35
M35	N35	P35	S35
V35	V35–TC	V35A	V35A–TC
V35B	V35B–TC		

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the ruddervator differential tail control rod assembly, which could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon 35 series

airplanes of the same type design, the proposed AD would require inspecting the ruddervator differential tail control rod assembly for corrosion or cracks, repairing or replacing any cracked or corroded part, and applying corrosion sealant to the ruddervator control pushrods. Accomplishment of the proposed actions would be in accordance with Raytheon SB No. 2668, dated September 1996.

Cost Impact

The FAA estimates that 10,405 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed inspection and anti-corrosion sealant application, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,497,200. This figure is based on the assumption that none of the affected airplanes would have a corroded or cracked part in the ruddervator differential tail control rod assembly that would need to be repaired or replaced. The FAA has no way of determining how many ruddervator control push rods that would be corroded or cracked.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation): Docket No. 96–CE–44–AD.

Applicability: Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35TC, V35A, V35A–TC, V35B, and V35B–TC airplanes (serial numbers D–1 through D–10403, D–15001, and D–15002), 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 within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the ruddervator differential tail control rod assembly, which could result in loss of control of the airplane, accomplish the following:

(a) Inspect the ruddervator differential tail control rod assembly for cracks and corrosion in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Service Bulletin (SB) No. 2668, dated September 1996. Prior to further flight, repair or replace any corroded or cracked part as specified in and in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon SB No. 2668, dated September 1996.

(b) Apply anti-corrosion sealant to the ruddervator control pushrods in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon SB No. 2668, dated September 1996.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26699 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–240–FOR, #74]

Ohio Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to section 1501:13–6–03 of the Ohio Administrative Code (OAC) dealing with the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.] November 18, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George

Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, Federal Register (47 CFR 34688). Subsequent actions concerning conditions of approval and program amendments can be fount at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated October 3, 1996, (Administrative Record No. OH–2170–00) Ohio submitted proposed amendments to the Ohio program concerning the SOAP. Ohio submitted the proposed amendments at its own initiative. The amendment proposes numerous changes regarding both the title of the division and gender. Throughout the amendment, references to the ''division of reclamation'' are changed to the ''division of mines and reclamation'' and references to ''he'' or ''his'' are changed to ''he or she'' or ''his or hers'', respectively. These changes are not specifically enumerated below. The substantive changes proposed by Ohio in the revised amendment are discussed briefly below:

1. OAC 1501:13–6–03 Small Operator Assistance Program

(a) Paragraph (A)(1) is amended by adding items for which qualified operators may request assistance. These include engineering analysis and designs necessary for the determination of probable hydrologic consequences added to subparagraph (A)(1)(a), and amending subparagraph (A)(1)(b) to include geologic drilling and statement of the results of physical and chemical analyses of test borings or core samples.

(b) New subparagraphs (C) (D) (E) and (F) are added to identify the development of cross-section maps and plans; the collection of archaeological information and other historical information and the preparation of plans necessitated thereby; pre-blast surveys; and the collection of site specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the chief, respectively, as items for which a qualified operator may request assistance.

(c) Paragraph (B) is amended by deleting subparagraphs (1) and (2) dealing with probable hydrologic consequences and results of test borings and core samplings which are added to Paragraph (A) of this amendment, and adding a statement referencing the services eligible are under paragraph (A).

(d) Paragraph (C)(2) is further amended by substituting the Department of Natural Resources as an additional reference for production figure verification instead of the division of mines and the division of reclamation. Subparagraphs (C)(2)(a) and (C)(2)(b) are amended by changing the applicant ownership limit from ''more than a five percent limit'' to ''ten percent or more'' limit.

(e) New subparagraph (D)(9) is added to require that an applicant for assistance shall also submit a general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated. Subsequent subparagraphs are re-lettered accordingly.

(f) Subparagraph (D)(10) is amended by deleting the specific map scale references required for a topographic map and adding a reference to Rule 1501:13–9–04 of the OAC. New subparagraph (D)(10)(E) is added to require that such topographic maps also include any additional information required by the chief.

(g) Paragraph (F)(2) is amended by deleting the heading ''specific provisions'' and adding the following: ''The data, analyses, and statements provided to the chief shall be sufficient to satisfy the requirements for:''. Subparagraphs (F)(2) (a) and (b) are amended to include engineering analyses and designs necessary for the probable hydrologic consequences determination, and the drilling and statement by a qualified laboratory of the result of test borings or core samplings, respectively. Subparagraph (F)(2)(b) is further amended by adding provisions for obtaining a waiver from the requirement. Subparagraph (F)(2)(c) pertaining to this waiver is deleted.

Existing subparagraph (F)(2)(d) is re-numbered as (F)(3), and existing subparagraphs (F)(2) (e) and (f) are deleted.

New subparagraphs (F)(2) (C), (D), (E), and (F) are added to identify the specific requirements that must be met for the development of cross-section maps and plans; the collection of archeological information and other historical information; pre-blast surveys; and the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values, respectively.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on November 4, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 1996.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–26776 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

[OH–239–FOR, #73]

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio permanent regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to sections of the Ohio Administrative Code (OAC) dealing with surface mining operations on remining areas. The amendment is intended to revise the Ohio program to be consistent with the Federal regulations as amended on November 27, 1995 (60 FR 58480).

DATES: Written comments must be received by 4:00 p.m., [E.D.T.] November 4, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information

on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated July 23, 1996, (Administrative Record No. OH–2168–00) Ohio submitted proposed amendments to the Ohio program concerning remining. Ohio submitted the proposed amendments at its own initiative. The proposed amendments were announced in the August 26, 1996, Federal Register (61 FR 43696). However, certain amendments concerning the permit application requirements and revegetation time frames were inadvertently omitted from that notice. Also, Ohio submitted corrections to its proposed amendments by letter dated October 4, 1996, (Administrative Record No. OH–2168–07). Therefore, OSM is reopening the public comment period only on the following proposed amendments:

1. OAC 1501:13–4–12 Requirements for Permits for Special Categories of Mining

New paragraph (L) is corrected by changing the date until which its requirements apply to September 30, 2004. The date was previously incorrectly identified as September 30, 1994.

2. OAC 1501:13–5–01 Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

New paragraph (E)(19) and subparagraphs (A), (B), and (C), are added to require that, for operations which will include remining areas under Rule 1501:13–4–12(L) of the Administrative Code, the application includes (A) Lands eligible for remining; (B) an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and (C) mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of Chapter 1513 of the Revised Code can be accomplished. Additionally, a semicolon and the word ''and'' are added at the end of paragraph (E)(18).

3. OAC 1501:13–9–15 Revegetation

(a) Paragraphs and subparagraphs (F)(3), (F)(3)(a), (G)(3)(a), (I)(6), (J)(1)(b), and (L)(2) are amended by deleting the words ''five year'' before the word ''period'' in each. These changes reflect the revised period of extended responsibility included in the proposed addition of new subparagraph (F)(2)(a).

(b) Subparagraph (F)(4)(d) is amended by deleting the words ''five years after the initial planting'' and substituting the words ''at the end of the period of extended responsibility''.

(c) Subparagraph (H)(2) is amended by deleting the words ''five year'' before the word ''period'' and adding the words ''and hay crops also meet, at a minimum, the ground cover standards of paragraph (G)(3)(B) during the last year of the period of extended responsibility.''

(d) Paragraph (L) is amended by deleting the words ''undeveloped land''; subparagraph (L)(2) is amended by deleting the words ''five year'' before the word ''period''; and subparagraphs (L)(2) (a), (b) and (c) continue to include references to three year requirements. Ohio is withdrawing its proposal to change these requirements to two years.

(e) Paragraph (M) is amended by separating the first sentence into two items with the second item being labeled as (1) and re-numbering the subsequent items accordingly. No word changes were made to these items. Subparagraph (M)(4) is amended by deleting the words ''five year'' before the word ''period''.

(f) New paragraph (O) is amended by adding the following exception to the Phase III bond release requirements of referenced paragraph (L)(2) on remined areas to subparagraph (4)(B) ''except that of the minimum countable trees per acre, eighty (80) percent have been in place for at least two (2) years, on each acre on which trees or shrubs are to be planted.''

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revision to the State's regulations that was submitted on July 23, 1996 (Administrative Record No. OH–2168–00), with the corrections and additions as noted above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 1996.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–26775 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–5637–5]

Standards of Performance for New Stationary Sources: Starch Production Plants, Cold Cleaning Machine Operations, and Organic Solvent Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed standards of performance, final action.

SUMMARY: New source performance standards (NSPS) required by section 111 of the Clean Air Act (Act) were proposed on September 8, 1994 (59 FR 46381) for new, modified, and reconstructed starch production plants, and on September 9, 1994 (59 FR 46602) for new, modified, and reconstructed cold cleaning machines. After a thorough review and analysis of the comments received during the public comment period, the Administrator has concluded that the proposed NSPS for these two source categories are not needed. The proposed NSPS are, therefore, being withdrawn.

In the September 9, 1994 notice proposing the NSPS for cold cleaning machines, the EPA proposed to withdraw the NSPS for organic solvent cleaners proposed on June 11, 1980 (45 FR 39765). The NSPS for organic solvent cleaners are also being withdrawn with this document.

DATE: These proposed rules are withdrawn as of October 18, 1996.

ADDRESSES: *Docket.* Docket No. A–94–18, containing supporting information used in developing the proposed NSPS for starch production plants and a detailed discussion of the comments received during the public comment period; and Docket No. A–94–08, containing the same information pertaining to the proposed cold cleaning machine operations NSPS, are available for public inspection and copying at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, S.W., Washington, D.C. 20460. The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The materials are available for review in the docket center or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548 or 7549. The FAX number for the Center is (202) 260–4000. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this action, contact Mr. William Maxwell [(919) 541–5430], Combustion Group [starch production facilities] or Mr. Daniel Brown [(919) 541–5305], Coatings and Consumer Products Group [cold cleaning machines]. Both contacts are at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Starch

The Proposed Standards

The proposed NSPS for starch production plants would have limited emissions of particulate matter from new, modified, and reconstructed facilities that produce dry starch (including modified starches) derived from corn, wheat, potatoes, tapioca, or other vegetable sources, and facilities drying starch extracted from the wastewater at snack food production facilities (e.g., potato chips, french fries). Typically, starch production plants are components of larger facilities that prepare a variety of products. For example, a corn wet milling facility will normally produce a range of products that can include animal feed, corn gluten, corn germ, germ meal, corn oil, starch, and starch derivatives. Starch derivatives can include modified specialty starches, dextrins, dextrose, corn syrup, high fructose corn syrup, ethanol, and a variety of sweeteners. Similar ranges of products may be derived from wheat, potatoes, or tapioca.

The starch facilities that would have been affected by the proposed NSPS for starch production plants are new, modified, and reconstructed starch dryers; dextrin roasters; and starch transfer, storage, and loading facilities at which construction, reconstruction, or modification commenced after September 8, 1994. The proposed NSPS would not have applied to any existing starch production facility, unless such a facility was subsequently modified or reconstructed. At the time of proposal, 17 different companies owned and operated the 47 known existing starch production facilities: 20 produced starch from corn; 3 from wheat; 21 from potatoes; 1 from tapioca; and 2 from other vegetable sources. These existing facilities are concentrated in the midwestern United States, but are found in 19 States across the country.

The proposed NSPS would also not have applied to small dryers; small dextrin roasters; or certain starch transfer, storage, and loading facilities located at snack food processing facilities. Specifically, drum dryers and dryers located at snack food processing facilities having a manufacturer's listed dry starch capacity of 907 kilograms per hour (kg/hr) (2,000 pounds per hour [lb/hr]) or less would have been exempt, because of the low level of emissions from these dryers. Similarly, dextrin roasters and starch transfer, storage, and loading facilities at snack food processing facilities would have been exempt if the dry starch capacity of any of the individual facilities was 454 kg/hr (1,000 lb/hr) or less, because of the low level of emissions from these facilities.

A starch dryer is the equipment used to remove uncombined (free) water from starch slurry through direct or indirect heating. There are several types of dryers used at starch production plants, including single-pass (also known as one-pass) flash dryers, ring (also known

as loop) flash dryers, spray dryers, drum dryers, and belt (also known as conveyor, tunnel, or apron) dryers. A dextrin roaster is a reactor vessel, or a series of vessels, in which starch is reacted, through the addition of heat and/or chemicals, to form the modified starch ''dextrin'' (or ''polydextrin''). Starch transfer, storage, and loading facilities include any facility used to blend, mix, mill, grind, screen, convey, transfer, store, or load for shipment (into any container for shipment, including, but not limited to, bag, truck, and rail car) dry starch.

Specifically, the proposed NSPS would have limited particulate matter emissions from ring flash dryers to 45 mg/dscm (0.02 gr/dscf); from single-pass flash dryers to 25 mg/dscm (0.01 gr/dscf); and from spray dryers, drum dryers, and belt dryers to 10 mg/dscm (0.05 gr/dscf). The proposed NSPS would also have limited visible emissions from dextrin roasters and starch transfer, storage, and loading facilities to zero percent opacity.

Rationale for Withdrawing the Proposed NSPS

The Agency is withdrawing the proposed NSPS for new, modified, or reconstructed starch production plants because it has concluded that promulgation of such standards of performance would achieve little or no emission reduction from starch facilities and, therefore, that promulgation of NSPS is unnecessary, not cost effective, and will not serve the purposes of the Act. After reviewing comments on the September 8, 1994 proposed NSPS, the EPA believes that new, modified, or reconstructed starch facilities that would be subject to the emission standards will employ the best demonstrated technological system of continuous emission reduction (BDT) necessary to meet such standards and, hence, will, or already do, meet the performance standards without additional regulatory requirements.

Although starch production facilities are one of the source categories on the priority list of major source categories for the development of NSPS pursuant to section 111 of the Act (section 60.16), in promulgating the priority list the Agency reserved the right to remove a source category from the priority list if it subsequently determined that promulgating NSPS for a particular source category would have little or no effect on emissions. Indeed, not only is it likely that promulgating NSPS for new or modified starch facilities would achieve little or no emission reduction, but currently available information about the relative size and operating practices of the starch industry suggests the industry does not pose the environmental concern that the Agency originally believed existed over 14 years ago when it listed starch production facilities on the priority list of major source categories.

Starch processing and production plants were listed in 1982 as one of 59 source categories on the priority list of major source categories because of the concern about particulate matter, a criteria pollutant, that is emitted from starch processing and production facilities in the form of starch dust. Significantly, starch facilities were initially identified in the late 1970's as a source of particulate matter for inclusion on the priority list of major source categories based on the potential for uncontrolled emissions of starch dust from a facility. It is, however, not the current practice of the starch industry, if indeed it ever was, to allow uncontrolled emissions of starch. As discussed below, starch facilities have an economic incentive to minimize losses of their product, starch, by recapturing emissions of starch dust to the extent possible in order to remain competitive. Accordingly, after issuing today's notice that withdraws the proposed NSPS for starch facilities, the Agency may remove the starch industry from the priority list of major source categories for which NSPS are to be promulgated.

Summary of Public Comments

None of the five commentors to the proposed standards supported the need for the standards. One commentor challenged the need for the NSPS and the remaining commentors addressed the technical aspects of the proposed standards. The comments that address the technical validity of the standards are not discussed in today's notice because they are not relevant to the Agency's decision to withdraw the proposed NSPS. A summary and analysis of these comments has been placed in the docket for the proposed rule.

The commentor that opposes the proposed NSPS argues that the standards are unnecessary, because (1) starch facilities are minor sources of particulate matter, (2) the proposed NSPS would not reduce emissions from new, modified, or reconstructed starch facilities as these facilities will employ BDT that would be required by the regulations to meet the proposed emission standards for particulate matter, (3) the proposed NSPS would impose significant additional administrative and reporting costs with no commensurate environmental benefits. The Agency agrees with the comments for the reasons discussed below.

Analysis of Comments

The EPA's analysis indicates that promulgation of NSPS for starch production plants would achieve little or no emission reduction from starch facilities. Owners and operators of starch facilities have a very significant economic incentive to recover as much of the starch particulate emissions from their facilities as possible. Unlike other facilities where particulate emissions are typically an unwanted by-product that not only has no economic value but would, in fact, be expensive for a facility to capture and dispose of properly, particulate emissions at starch facilities are made up of starch, which is of course, the very product of economic value that such facilities produce for sale. To the extent, therefore, that a starch facility captures and minimizes the amount of starch particulates released to the environment, it will have that much more starch product for sale and, hence, be that much more profitable. Indeed, a starch facility that allows the starch that it produces to be wasted as particulate emissions to the environment would be less efficient than a competitor that does not waste its product and would become less competitive and, hence, less profitable than its cleaner and more efficient competitor.

Pursuant to the proposed NSPS, new, modified, and reconstructed starch dryers; dextrin roasters; and starch transfer, storage, and loading facilities would have had to use wet scrubbers or fabric filters, which is the BDT for starch facilities, in order to meet the required emission levels. The EPA's investigations, however, show that existing facilities already collect particulate matter from the exhaust ducts or vents of the affected facilities for the reasons discussed above. Specifically, while most existing starch dryers are, at a minimum, equipped with cyclonic collectors, the newer starch dryers are equipped with low energy wet scrubbers or fabric filters, either alone or in combination with one or more cyclones. Waste water from the scrubbers and collected dust from the fabric filters are returned to the process and not sent to disposal. Similarly, dextrin roasters and starch transfer, storage, and loading facilities employ fabric filters to recover starch emissions in dry form for immediate recycle to the process. (See docket A–94–18, entry II–A–8, pp. 4+).

The fact that existing newer starch facilities already employ BDT (even

though they are not required to do so) supports the conclusion that promulgating NSPS for new or modified starch facilities would achieve little or no emission reduction. Not only would this appear to confirm that existing starch facilities must minimize losses of their product to remain economically competitive, but it further suggests that any new or modified starch facilities, which must function at least as efficiently as existing facilities in order to compete with such facilities, must equal, if not exceed, the amount of starch recaptured by existing facilities and, thereby, effectively control emissions of particulate matter at or below the levels of emissions contemplated by the proposed NSPS.

For the reasons discussed above, the Agency anticipates little or no reduction in particulate matter emissions from starch facilities by mandating maximum emission levels. Arguably, any emission reductions achieved by promulgating NSPS would result from improved operation and maintenance of starch facilities as a result of the proposed monitoring requirements for such facilities. However, it is the EPA's judgement that the potential marginal reduction in particulate matter emission levels from starch facilities does not justify the additional administrative costs (primarily related to monitoring and recordkeeping and estimated at approximately $1.6 million nationwide) that would be required by the standards of performance.

Cold Cleaning Machine Operations and Organic Solvent Cleaners

The Proposed Standards

The NSPS for organic solvent cleaners, which were proposed on June 11, 1980, would have limited emissions of volatile organic compounds (VOC) and trichloroethylene, perchloroethylene, methylene chloride, 1,1,1-trichloroethane, and trichlorotrifluoroethane from new, modified, and reconstructed organic solvent cleaners. On December 2, 1994, national emission standards for hazardous air pollutants (NESHAP) were promulgated for halogenated solvent cleaners (40 CFR Part 63, Subpart T), and on September 9, 1994, the NSPS for cold cleaning machine operations was proposed. The halogenated solvent cleaner NESHAP and the proposed NSPS for cold cleaning machine operations eliminated the need for the duplicative standards proposed in the NSPS for organic solvent cleaners (45 FR 39766). Therefore, the EPA proposed withdrawal of the NSPS for organic solvent cleaners when the NSPS for cold cleaning machines was proposed.

The proposed NSPS for cold cleaning machine operations would have limited emissions of VOC from new, modified, and reconstructed cold cleaning machines. Specifically, the proposed NSPS would have limited VOC emissions from cold cleaning machines with a solvent-air interface greater than or equal to 1.8 square meters (19 square feet) by requiring equipment standards and work practices considered to be BDT.

Rationale for Withdrawing the Proposed NSPS

The decision to withdraw the proposed NSPS is based on the Agency's finding that all cold cleaning machines likely to become subject to the NSPS would employ BDT, even in the absence of the NSPS. The EPA believes that existing regulations are adequate to protect the public health and welfare, and promulgation of the NSPS for cold cleaning machines would impose additional administrative burdens without providing significant emission reductions. In making this decision, the Administrator has concluded that withdrawal of the proposed NSPS is consistent with the purposes of section 111 of the Act in light of current (and expected future) control patterns for cold cleaning machine operations.

The proposed standards were all pollution prevention techniques that minimize the solvent vapor loss from the machine and encourage reuse of solvent. The proposed equipment standards for cold cleaning machines included covers, drain rack, raised freeboard, visible fill line, solvent pump pressure design limits, and a label stating required work practices. The proposed work practices included not exceeding the tank solvent fill line, flushing performed in the freeboard area with continuous stream, operating the agitator without observable splashing, closing the machine's cover when it is not in use or when the agitator is being used, guarding against air drafts when the machine cover is open, draining cleaned parts, storing waste solvent in closed containers, and cleaning up spills. Finally, the proposed NSPS contained reporting requirements including an initial notification report demonstrating equipment compliance and an annual report demonstrating continued equipment compliance. The Office of Management and Budget (OMB) did not find sufficient justification for the annual reporting requirement; therefore, that provision would have been dropped from the proposed NSPS.

Notwithstanding that there is currently no NSPS for cold cleaning machines, these units are already subject to many, if not all, of the regulatory requirements that would be mandated by the NSPS. Cold cleaning machines, for example, that use halogenated solvents are subject to the NESHAP for halogenated solvent cleaning. Furthermore, cold cleaning machines located in non-attainment areas, regardless of whether they use halogenated or non-halogenated solvents, are subject to reasonably available control technology (RACT) rules established pursuant to section 182 of the Act and the 1977 Control Techniques Guideline (CTG) for the Control of VOC Emissions from Solvent Metal Cleaning. The EPA, therefore, believes that the proposed NSPS requirements would be duplicative of existing requirements for cold cleaning machines that are already subject to the 1994 NESHAP for halogenated solvent cleaning and/or RACT rules based on the 1977 solvent metal cleaning CTG.

The existing regulatory requirements establish four levels of coverage for cold cleaning machines; the relative stringency of the regulatory requirements applicable to each category depends on the type of solvent (halogenated, non-halogenated, or mixture of both) used in the operation, and whether the operation takes place in an area designated as attainment or non-attainment of the national ambient air quality standards for ozone.

The first level of coverage would affect cold cleaning machines that (1) use both halogenated and non-halogenated solvents and (2) are located in a non-attainment area. These units are subject to both the NESHAP and RACT requirements. The existing regulatory requirements applicable to machines in this situation not only meet, but exceed, the regulatory requirements of the proposed NSPS. The combination of the NESHAP and RACT requirements provide for the same five equipment standards and nine work practices that would be required by the proposed NSPS. Furthermore, cold cleaning machines in this situation are also subject to monitoring, recordkeeping, and annual reporting requirements that the proposed NSPS would not require.

The second level of coverage would affect cold cleaning machines that (1) use both halogenated and non-halogenated solvents and (2) are operated in an attainment area. These units are subject to the NESHAP requirements only. The NESHAP requires the same work practices as the proposed NSPS and the same

equipment standards with the exception of the drain rack, the label stating the work practices, and the solvent pump pressure design limits. As discussed in the Response to Comments Section below, the solvent pump pressure design limit as proposed in the NSPS would have been deleted if the NSPS had been promulgated. Furthermore, although a drain rack is not specified as an equipment standard in the NESHAP, draining of cleaned parts is a work practice requirement that inherently requires a drain rack, or something of equal utility, to be present. Accordingly, the EPA believes that the existing regulatory requirements applicable to machines in this situation would provide for the same work practices and equipment standards that would be required in a final NSPS. Again, cold cleaning machines in this situation are also subject to monitoring, recordkeeping, and annual reporting requirements that a final NSPS would not have required.

The third level of coverage would affect cold cleaning machines that (1) use only non-halogenated solvents and (2) are located in a non-attainment area. These units are subject to RACT requirements only. The RACT requirements include several of the work practices proposed in the NSPS and all of the equipment standards with the exception of a visible fill line. The work practice requirements included in the proposed NSPS, but not required by RACT, include not exceeding the solvent fill line, flushing to be performed in the freeboard area with continuous stream, operating the agitator without observable splashing, guarding against air drafts when the machine cover is open, and cleaning up spills. It is difficult to verify continued compliance for these and all other work practices proposed in the NSPS and required by RACT. The work practices, however, are common sense pollution prevention techniques that minimize solvent loss and are beneficial to the operators of cold cleaning machines. Accordingly, the EPA believes the existing regulatory requirements applicable to machines in this situation would provide for the work practices and the equipment standards (with the exception of a visible fill line) included in a final NSPS. A final NSPS would have required an initial notification demonstrating compliance with all equipment standards, including a visible fill line. Although the absence of a final NSPS in this situation could result in cold cleaning machines without a visible fill line, as discussed below, the EPA believes all cold cleaning machines will be constructed with visible fill lines.

Finally, the fourth level of coverage would affect cold cleaning machines that are (1) located in an attainment area and (2) operated with only non-halogenated solvents. These units are subject to neither the NESHAP nor the RACT requirements. Although machines in this situation are not necessarily subject to RACT rules or the NESHAP, to the extent that cold cleaning machines are built to a single standard with BDT, the EPA believes that such machines will meet both the RACT and NESHAP equipment standards. Based on information available to the Administrator, the EPA believes that cold cleaning machines are built to a single standard that reflects BDT as specified in the CTG and NESHAP such that a machine design can be constructed for sale and/or distribution throughout the United States regardless of the machines ultimate location in an attainment or non-attainment area. Similarly, cold cleaning machines built to a single standard reflecting BDT allows the machine operators flexibility in choosing the type of cleaning solvent used (halogenated, non-halogenated, or a mixture). Accordingly, the EPA believes that machines in this situation would meet the equipment standards that a final NSPS would require. The EPA also believes that operators of machines in this situation would meet the work practices that would be included in a final NSPS. The EPA expects that the regulated community would follow such work practices as a matter of course to the extent that such practices are pollution prevention techniques which benefit the operator and reflect prudent, if not standard, operating practices already employed in the industry.

Under a separate action, the Agency may proceed to revise the priority list of major source categories for which NSPS are required by deleting the ''organic solvent cleaners'' listing. In finalizing this priority list, the Agency indicated that a subsequent finding that any NSPS would have little or no effect on emissions would be sufficient grounds for removing that source category from the priority list (44 FR 49223).

Summary of Public Comments

Ten comment letters were received during the public comment period following proposal. Two commenters advised the Agency that there was redundancy and duplicative requirements in the proposed NSPS that were already required in the NESHAP and the RACT; the other commenters addressed various technical aspects of the proposed NSPS. After reviewing all the comments, the EPA has concluded that the proposed NSPS is not needed. A summary and analysis of the ten comment letters received appears in the docket; only those comments pertinent to the decision to withdraw the NSPS are discussed here.

The comment regarding the duplicative requirements in the proposed NSPS and NESHAP suggested that cold cleaning machines could be subject to both standards which would require unnecessary compliance burden with no additional air quality benefit. The comment regarding duplicative requirements in the proposed NSPS and RACT rules suggested that some State RACT rules are more stringent than the proposed NSPS and specific language should be included in the final NSPS stating that more stringent RACT rules take precedence over the NSPS. Two of the technical comments received were in regard to solvent pump pressure design limits stating that certain cleaning operations could only be conducted with high pressure solvents and the final NSPS should not prohibit these operations. These comments are discussed in the following paragraphs.

Analysis of Comments

The EPA's analysis indicates that the proposed NSPS would achieve little or no emission reduction. At proposal, the Agency acknowledged that promulgation of the NESHAP for halogenated solvent cleaners eliminated the need for the NSPS for organic solvent cleaners and proposed withdrawal of that NSPS. The EPA now believes that existing regulations for cold cleaning machines in the NESHAP and RACT rules are adequate to protect public health and welfare and the proposed NSPS for cold cleaning machines is also unnecessary. If the EPA moved forward with promulgation of the NSPS, the equipment standard for solvent pump pressure would have been eliminated so as not to prohibit necessary cleaning operations for some sectors of industry. With the absence of this equipment standard, the NESHAP equipment standards are essentially the same as the NSPS equipment standards (see rationale for withdrawing the NSPS).

After reviewing its analysis and the submitted comments, it is the Agency's judgment that compliance with the NSPS in this instance would achieve little or no VOC emission reductions; therefore, the benefits of the proposed standards do not justify the additional administrative costs that would be required by an NSPS.

Economic and Regulatory Impacts

Today's withdrawal of three proposed rules is not a rulemaking; it does not impose or relieve any regulatory requirements or costs on the regulated community or the national economy.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Intergovernmental Relations, Reporting and recordkeeping requirements, Starch production plants, Cold cleaning operations, Organic solvent cleaners.

Dated: October 11, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–26816 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400105; FRL–5396–9]

Copper Metal; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove copper metal (Cu^0, CAS No. 7440-50-8) from the list of chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's conclusion that copper metal does not meet the deletion criterion of EPCRA section 313(d)(3). Specifically, EPA is denying this petition because EPA's review of the petition and available information resulted in the conclusion that copper ion (i.e., Cu^{+1} and Cu^{+2}) can become available from copper metal and that copper ion is highly toxic to several aquatic species.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202-260-3882 or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Copper was included in the initial list of chemicals and chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61439, November 30, 1994) (FRL-4922-2).

II. Description of Petition and Relevant Regulations

On August 17, 1995, EPA received a petition from the National Electrical Manufacturers Association (NEMA) to remove copper metal (CAS No. 7440-50-8) from the list of toxic chemicals subject to the annual release reporting requirements of EPCRA section 313 and PPA section 6607. NEMA suggested that the current unqualified copper listing should be replaced with a qualified listing limited to fume and dust forms only. The petitioner contends that copper metal, in forms other than fume or dust, should be deleted from the EPCRA section 313 list of toxic chemicals because the available data show that copper in metallic form does not meet the criteria for inclusion on the list of EPCRA section 313 chemicals. The petitioner also asserts that copper ion is unavailable from copper metal under environmental conditions.

In addition to being listed under EPCRA section 313, copper metal is regulated by EPA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under CERCLA, copper metal is considered a hazardous substance if its particle size is less than 100 micrometers (0.004 inch). Copper ion (i.e., Cu^{+1} and Cu^{+2}) is regulated under the Safe Drinking Water Act (SDWA). In the Federal Register of June 7, 1991 (56 FR 26460), EPA promulgated a maximum contaminant level goal (MCLG) and a national primary drinking water regulation (NPDWR) for copper ion in drinking water. The MCLG was set at 1.3 milligrams/liter (mg/l) of copper ion, and the NPDWR consists of a treatment technique that includes corrosion control treatment, source water treatment and public education.

III. EPA's Technical Review of Copper Metal

The technical review of the petition to delete copper metal included an analysis of the chemistry, health, ecological and environmental fate data known for this substance.

A. Chemistry

Copper metal (Cu^0; CAS No. 7440-50-8) is a naturally-occurring reddish, lustrous, ductile, malleable, water insoluble substance, having a melting point of 1083 °C and a boiling point of 2595 °C (Refs. 1 and 2). Copper metal has many commercial uses. Some of the major uses of copper metal include production of copper tubing, copper wire, copper compounds, brass and bronze, to name just a few. Copper metal gradually loses its lustrous

appearance when exposed to air. Surfaces of copper metal exposed to moist air gradually form copper (II) carbonate. Copper metal reacts with mineral acids to form copper salts. Copper metal can also react with organic acids (Refs. 1 and 2).

Although copper metal is insoluble in water, all waters are corrosive to copper metal to some degree (Ref. 3). The corrosivity of water to copper is influenced by a variety of factors. These factors include the duration of contact between the water and copper metal, and water quality parameters such as acidity, alkalinity, dissolved inorganic carbonate and calcium, water temperature, and dissolved oxygen content. Acidity is the most significant of these parameters. Waters with high acidity (i.e., low pH) are associated with the highest levels of copper corrosion (Ref. 3). Corrosion of copper metal by water results in the conversion of the metal (Cu^0) to its ionic forms (i.e., Cu^{+1} and Cu^{+2}). Ionic forms of copper are typically quite soluble in water. Although waters with high acidity are associated with the highest levels of copper corrosion, even drinking water, which is not highly acidic, causes corrosion of copper metal. For example, the primary source of copper in drinking water is corrosion of copper pipes used to supply the water (Ref. 3). Copper levels above 1.3 mg/l (the MCLG) are rarely found in drinking water, although levels above 1.0 mg/l and as high as 2.37 mg/l have been reported (Ref. 3). Thus, although copper metal is insoluble in water, copper metal can be corroded by water (including drinking water) to yield water-soluble copper ions.

B. Toxicological Evaluation

Several comprehensive reviews on the health and environmental effects of copper are available, and were used during the review of the petition to assess the effects of copper metal on human health and the environment. Because copper metal is known to corrode in water to yield copper ion (Ref. 3), the toxicological evaluation of copper metal also included an assessment of the health and environmental effects of copper ion. These reviews include: a 1995 EPA document entitled ''Copper Profile for DfE Printed Wiring Board Project'' (Ref. 2); a 1991 Agency for Toxic Substances and Disease Registry document entitled ''Toxicological Profile for Copper'' (Ref. 4); a 1987 EPA document entitled ''Summary Review of the Health Effects Associated with Copper'' (Ref. 5); and a 1987 EPA document entitled ''Drinking Water Criteria Document for Copper'' (Ref. 6). In addition to these reviews, health and environmental data on copper are also reviewed and discussed in EPA's Integrated Risk Information System (IRIS) (Ref. 7), and in a previous Federal Register Notice (58 FR 34738, June 29, 1993; Ref. 8). The health and environmental portions of these publications (Refs. 2-8) are briefly summarized below. Detailed summaries and discussions can be found in the publications and in the technical reports (Refs. 9-11) prepared by the EPA scientists who reviewed the publications.

1. *Human health*. Copper is an essential nutrient for humans and animals, with an adult recommended daily allowance of 2.0 to 3.0 milligrams per day (mg/day). In ionic form (i.e., Cu^{+2}), copper is absorbed from the gastrointestinal tract and lungs, and to a lesser degree, through the skin. Following absorption, copper is distributed to all parts of the body, especially the liver. Except in the forms of either fume or dust or other small particulate forms, copper metal (Cu^0) is not expected to be absorbed from any route.

In humans and laboratory animals, gastrointestinal effects such as nausea, vomiting and diarrhea have occurred following acute exposure to Cu^{+2} (in the form of cupric sulfate) in 1-day oral doses ranging from 0.06 to 6 milligrams per kilogram (mg/kg) of Cu. Doses of approximately 2 grams (g) of Cu^{+2} can cause more serious effects such as vascular injury and hemolytic anemia, resulting in severe kidney and liver damage. Based on the levels of copper typically found in drinking water (see section A of this unit), EPA does not believe that it is reasonable to anticipate that human exposures to oral doses of Cu^{+2} of this magnitude will occur beyond facility site boundaries as a result of continuous, or frequently recurring, releases of copper metal. In adult mammals (including humans), it is unclear if chronic oral exposure to copper metal or copper ion results in toxicity. The lack of any clear relationship between chronic exposure to copper and copper toxicity in adult mammals may be due to homeostatic mechanisms that serve to maintain a baseline copper level in the body and protect mammals from the adverse effects of copper excess or deficiency.

Human and animal carcinogenic data on copper are insufficient to determine the carcinogenic potential of copper in humans.

2. *Environmental effects*. Copper ion exhibits high acute and high chronic toxicity to aquatic organisms that results in the death of the organism. Under section 303 of the CWA, EPA has issued Water Quality Criteria for copper ion to protect aquatic life. These criteria describe what level of copper ion ambient water can contain without potentially causing harm to aquatic species. The acute criterion in fresh water is 9.2 parts per billion (ppb) (0.0092 mg/l). The chronic criterion in fresh water is 6.5 ppb (0.0065 mg/l). In salt water, the acute criterion is 2.9 ppb (0.0029 mg/l). There is currently no chronic salt water criterion.

The aquatic toxicity of copper ion is dependent on water quality factors that include acidity, presence of organic substances, calcium, and carbonate. Toxicity decreases as water hardness (concentration of calcium carbonate), alkalinity or total organic carbon content increases. At a water hardness of 250 mg/l, the 48-hour acute toxicity median lethal concentration (LC_{50}) of copper ion to daphnids is 6.5 ppb. At a water hardness of 50 mg/l, the 96-hour acute toxicity values in fish ranged from 16.7 ppb (northern squawfish) to 114 ppb (for fathead minnows). Copper ion is highly acutely toxic to many other aquatic species such as blue mussels (96-hour LC_{50} = 5.8 ppb) and marine fishes (96-hour LC_{50} = 13.9 ppb). Chronic aquatic toxicity values for copper ion include 6.1 ppb (for invertebrates) and 3.9 ppb (for brook trout). Copper ion is known to bioconcentrate in certain aquatic species. The bioconcentration factors (BCF) of copper in algae (*Chlorella* sp.); marine polychaete worms (*Neanthes arenaceodentata*); and the eastern oyster are 2,000, 2,550, and 28,200 respectively.

IV. Technical Summary

EPA's technical review concluded that copper metal can be corroded by waters under several conditions, resulting in the liberation of copper ion. EPA's review also concluded that copper ion is highly toxic to many aquatic species.

V. Rationale for Denial

Copper metal is a listed toxic chemical subject to EPCRA section 313 and PPA section 6607 reporting requirements. The petition to delist copper metal is based on the petitioner's contention that copper metal is not toxic and does not meet any of the statutory criteria under section 313(d)(2). Because EPA has determined that all forms of copper metal meet the criteria of EPCRA section 313(d)(2)(C), EPA concludes that copper metal should not be deleted from the section 313 list of toxic chemicals, and the petition should be denied.

EPA's review of information pertaining to copper metal resulted in the conclusion that, (1) copper metal can be readily converted to copper ion in waters under environmental conditions; and (2) copper ion is highly toxic to aquatic organisms resulting in the death of these organisms. Thus, copper metal can reasonably be anticipated to cause toxicity in aquatic organisms because of its ability to liberate copper ion. Because copper can be reasonably anticipated to be highly ecotoxic and induces well-established serious adverse effects, EPA does not believe that an exposure assessment is necessary to make the determination required by EPCRA section 313(d)(2)(C). For a discussion of the use of exposure in EPCRA section 313 listing/delisting decisions, see, e.g., 59 FR 61440, November 30, 1994.

EPA's denial of this petition is consistent with the Agency's published policy and guidance on metal compound categories under section 313 of EPCRA (56 FR 23703, May 23, 1991). This policy and guidance articulated EPA's determination that the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion. Thus, EPA stated that for petitions to exempt individual metal-containing compounds from the EPCRA section 313 list of toxic chemicals, EPA bases its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability, as well as on the toxicity exhibited by the intact species. EPA stated that the Agency will deny petitions for chemicals that dissociate or react to generate the metal ion at levels which can reasonably be anticipated to cause adverse effects to human health or the environment and for which the metal ion availability cannot be properly characterized.

In summary, EPA has determined that copper metal can reasonably be anticipated to cause a significant adverse effect on the environment of a sufficient seriousness to warrant continued reporting of copper under EPCRA section 313 because copper ion is available from copper metal and copper ion is highly toxic to aquatic organisms. Therefore, copper metal in all forms satisfies the criterion in EPCRA section 313(d)(2)(C). Accordingly, EPA is denying the petition.

VI. References

(1) The Merck Index, An Encyclopedia of Chemicals, Drugs and Biologicals. Eleventh Edition (1989). Merck Co., Inc.: Rahway, N.J.; page 2516.

(2) USEPA, OPPTS. 1995. Copper and Compounds. Chemical Summary for Copper and Selected Copper Compounds. In: Copper Profile for DfE Printed Wiring Board Project (Draft).

(3) USEPA. 1991. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule. Federal Register, Vol. 56, No. 110, June 7, 1991; pages 26460-26564.

(4) Toxicological Profile for Copper. Agency for Toxic Substances and Disease Registry (ATSDR) Report No. ATSDR/TP-9008.

(5) USEPA, OHEA. 1987. Summary Review of the Health Effects Associated with Copper. Health Issue Assessment. Office of Health and Environmental Assessment, Washington, DC; Report No. EPA/600/8-87/001.

(6) USEPA, ECAO. 1987. Drinking Water Criteria Document for Copper. Environmental Criteria and Assessment Office, Cincinnati, OH; Report No. EPA ECAO-CIN-417.

(7) U.S. Environmental Protection Agency's Integrated Risk Information System (IRIS) file pertaining to Copper (CAS No. 7440-50-8).

(8) USEPA. 1993. Chromium, Nickel, and Copper in Stainless Steel, Brass, and Bronze: Toxic Chemical Release Reporting; Community Right-to-Know. Federal Register, Vol. 58, No. 123, June 29, 1993; pages 34738-34741.

(9) USEPA, OPPTS. 1995. Memorandum from Dr. Nicole Paquette, Toxicologist, Health and Environmental Review Division. Re: Petition to Delist Copper Metal from the Toxics Release Inventory. (September 20, 1995).

(10) USEPA, OPPTS. 1995. Hazard Assessment of Copper, Memorandum from Lorraine Randecker, Hazard Integrator, Chemical Screening and Risk Assessment Division, re: Petition to Delist Copper Metal from the Toxics Release Inventory. (April, 4, 1996).

(11) USEPA, OPPTS. 1995. Memorandum from Dr. Jerry Smrchek, Biologist, Health and Environmental Review Division, re: Petition to Delist Copper Metal from the Toxics Release Inventory. (October 11, 1995).

VII. Administrative Record

The record supporting this decision is contained in docket control number OPPTS-400105. All documents, including the references listed in Unit VI. above and an index of the docket, are available to the public in the TSCA Non-Confidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: October 8, 1996.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–26812 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 799

[OPPTS–42187C; FRL–5571–3]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule and Extension of Period for Receipt of Proposals for Enforceable Consent Agreements for Pharmacokinetics Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on proposed test rule and extension of period for receipt of proposals for enforceable consent agreements for pharmacokinetics studies.

SUMMARY: EPA is extending the public comment period from December 23, 1996 to January 31, 1997 on the proposed rule to require manufacturers and processors of 21 hazardous air pollutants (HAPs) to test these substances for certain health effects. This proposed rule was published in the Federal Register on June 26, 1996 (61 FR 33178) (FRL–4869–1). In addition, the deadline for receipt of proposals for enforceable consent agreements (ECAs) regarding the performance of pharmacokinetics (PK) studies which would permit extrapolation from oral data to predict risk from inhalation exposure for the HAPs is being extended from October 24, 1996 to November 25, 1996.

DATES: Written comments on the proposed rule must be received by EPA on or before January 31, 1997. Written proposals for ECAs for PK studies must be received by EPA on or before November 25, 1996.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by document control number (OPPTS–42187A; FRL–

4869–1) and three copies of proposals for PK studies, identified by document control number (OPPTS–42187B; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC, 20460.

A public version of the official rulemaking record supporting this action, excluding confidential business information (CBI), is available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except on legal holidays.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

Comments and data may also be submitted in electronic form by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Such comments and data must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–42187A)(FRL–4869–1). No information claimed as CBI should be submitted through e-mail. Comments in electronic form may be filed online at many federal depository libraries.

The official record of this action, as well as the public version, will be maintained in paper form. EPA will transfer all comments received electronically into paper form and will place the paper copies in the official record. The official record is the paper record maintained at the address listed at the beginning of the ''ADDRESSES'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline @epamail.epa.gov.

For technical information contact: Robert A. Reiley, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; telephone: (202) 260–1105; fax: (202) 260–1096; e-mail: reiley.robert@epamail.epa.gov.; or Gary Timm, Senior Technical Advisor, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–1105; fax: (202) 260–8168; e-mail: timm.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The HAPs rule proposed testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of: 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. EPA is extending the period for public comment on the proposed rule from December 23, 1996 to January 31, 1997.

In addition, in the HAPs proposal, EPA solicited proposals for ECAs regarding the performance of pharmacokinetics studies which would permit extrapolation from oral data to predict effects from inhalation exposure. EPA is extending the period for receipt of proposals for ECAs for PK studies from October 24, 1996 to November 25, 1996.

EPA is extending the period for submitting proposals for ECAs as a result of requests by several members of the public for additional time to submit such proposals. EPA is extending the comment period on the proposed rule to allow adequate time for comments on the proposed rule to be submitted after the Agency has considered the ECA proposals.

List of Subjects in 40 CFR Part 799

Environmental Protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 15, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–26813 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570

[WO–320–1990–01–24 A]

RIN 1004–AC49

Leasing of Solid Minerals Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations governing leasing of solid minerals other than coal and oil shale. The purpose of the amendment is to comply with President Clinton's Government-wide regulatory reform initiative to eliminate, streamline, or rewrite regulations in plain English. The current rule includes separate sections for all the solid minerals commodities, and the resulting language is repetitive in many instances. The proposed rule will reorganize these solid minerals regulations to eliminate redundant language and streamline the regulations. The proposed rule will also clarify the responsibilities of interested parties.

DATES: You must submit your comments by January 16, 1997. BLM may not consider comments received after this date in developing the final rule.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. Commenters may transmit comments electronically via the Internet to WOComment@wo.blm.gov. Please include ''AC49'' and your name and address in your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030. Comments will be available

for public review at the L Street address during regular business hours, from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Horan, (202) 452–5023 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Your written comments on the proposed rule should—

(a) Be specific;

(b) Be confined to issues about the proposed rule;

(c) Explain the reason for the recommended change; and

(d) Where possible, reference the specific section or paragraph of the proposal which you are addressing.

BLM may not necessarily consider or include in the Administrative Record or the final rule comments which BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal Departments and Agencies directing them to simplify their regulations. In response to the President's directive, BLM analyzed 43 CFR part 3500 through 43 CFR part 3570 to determine whether the regulations were current and written in clear and understandable terms. As a result, BLM decided that we could reorganize the regulations to achieve significant reductions in length while greatly improving the clarity of the document.

Statutory Basis of BLM's Regulations

BLM's regulatory program relating to solid minerals is based on several different statutes which give BLM authority to regulate mineral leasing on the lands administered by the bureau.

Mineral Leasing Act of 1920

The Mineral Leasing Act of 1920 (the Act), as amended and supplemented (30 U.S.C. 181 *et seq.*), provides for leasing of certain deposits of phosphates, potassium, gilsonite, and sodium minerals on public domain lands. The Act authorizes the Secretary of the Interior to grant to any qualified applicant a permit or lease for certain deposits of minerals on lands owned by the United States.

Reorganization Plan No. 3 of 1946

Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) transferred the responsibilities of the Secretary of Agriculture for the leasing or other disposal of hardrock minerals to the Secretary of the Interior for certain areas.

Mineral Leasing Act for Acquired Lands of 1947

The Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), provides for the leasing of certain acquired lands. This statute authorizes the Secretary of the Interior to establish rules and regulations necessary to grant any qualified applicant a permit or lease to promote mining of phosphate, sodium, potassium, sulphur and gilsonite deposits on Federal acquired lands.

The Federal Land Policy and Management Act of 1976

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA) authorizes the Secretary of the Interior to develop guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of BLM.

Other authorities which address programs related to specific commodities and lands include the following:

(a) Certain lands added to the Shasta National Forest (30 U.S.C. 192c);

(b) Public domain lands in National Forests in Minnesota (6 U.S.C. 508(b));

(c) Gold, silver or quicksilver in confirmed private land grants (30 U.S.C. 291–293);

(d) Reserved minerals in lands patented to the State of California for parks or other purposes (47 Stat. 1487, as amended);

(e) National Park Service areas—

(i) Lake Mead National Recreation Area (16 U.S.C. 460n *et seq.*);

(ii) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area (16 U.S.C. 460q *et seq.*);

(iii) Ross Lake and Lake Chelan National Recreation Areas (16 U.S.C. 90c *et seq.*);

(iv) Glen Canyon National Recreation Area (16 U.S.C. 460dd *et seq.*);

(f) Shasta-Trinity Units of the Whiskeytown-Shasta Trinity National Recreation Area (16 U.S.C. 460q *et seq.*); and

(g) White Mountains National Recreation Area (16 U.S.C. 460mm–2 through 460mm–4).

Development of BLM's Regulations

The last major revision of these solid leasable minerals regulations was published in the Federal Register on April 22, 1986 (51 FR 15204). That revision included separate parts covering specific mineral commodities. The commodity-by-commodity format completed an attempt to clarify the regulations that began with amendments published on April 25, 1984 (49 FR 17892).

Under the 1986 organization of the regulations, processes such as issuance of exploration licenses and mineral leases were addressed in a similar or identical manner under each commodity. This organization was designed to allow parties interested in each commodity to look in only one part of the regulations to find the provisions relating to their commodity. However, not all of the leasing or permitting regulations were included with the commodity, and the regulations were so extensive that the complete body of solid mineral regulations occupied about 100 pages of the Code of Federal Regulations.

III. Discussion of Proposed Rule

As part of BLM's response to the administration's regulatory initiatives, we reviewed this extensive body of material and decided to consolidate and to eliminate the duplicative presentation of processes. BLM understands that our readers want to be able to find particular subject matter easily in our regulations. However, we believe that the plain English approach, particularly the expanded table of contents, will make it easy for readers to find material that is of concern to them. The overall reduction in the volume of BLM's regulations achieved by this revision should make it easier for the reader to find particular subject matter.

BLM believes that a consolidated approach to these regulations offers other advantages. If BLM revises its procedures relating to solid minerals, we would need to undertake only one regulatory action to conform the consolidated regulations to any new revisions in our procedures. This reduces the time it would take BLM to keep its regulations up to date and internally consistent. When several different regulations address one process, as in the current version of 43 CFR part 3500, it is difficult for BLM to ensure that changes made to one part get made in all relevant parts. As a result, parts that should be identical diverge over time.

As a result of these considerations, BLM has determined that we can eliminate the repetition represented by the current regulatory structure, while enhancing our readers' ability to find

material of interest to them. We are particularly interested in comments on whether it is easy to find particular subject matter in this proposed rule. We would also welcome suggestions for further consolidation and reorganization. We understand that a number of different organizations of these regulations are reasonable, and are interested in suggestions from the public as to the most readable and logical arrangement of these rules. BLM also invites comments from surface management agencies, surface owners, and other interested persons as to whether any of the proposed changes would make substantive changes not discussed in this preamble.

Most of the changes BLM is proposing today are for the purpose of streamlining and clarifying the regulations. All parts and subparts of what is currently Group 3500, Management of Solid Minerals Other Than Coal, are affected, except parts 3580 and 3590. BLM is not proposing any changes to these two parts at this time, but may propose changes to these parts in the future for purposes of streamlining and clarification. If BLM finalizes these proposed regulations, certain changes will be made in those two parts to conform the cross references to the new numbers.

The current proposed action eliminates the commodity-specific provisions contained in parts 3510, 3520, 3530, 3540, 3550, 3560, and 3570. BLM proposes to expand the general material currently found in part 3500 to incorporate all substantive provisions of those parts. As a result, the new part would contain subparts 3501 through 3517. Details of these proposed subparts can be found in the table of contents.

In addition to rewriting the regulations for clarity, BLM is proposing to:

1. Eliminate the requirement to describe the lands for which you are making an application once you have properly described them and BLM has issued a prospecting permit or lease. This would eliminate the need for the applicant to submit a land description with his or her application for a preference right lease or for assignments where the land description duplicates that in the prospecting permit or original lease. BLM would still require land descriptions for assignments of parts of the land described in the original prospecting permit or lease. Applicants would still need to identify the lease or permit by serial number.

2. Increase the State acreage limitation for potassium leases. Current 43 CFR 3530.3 specifies that there is a per-State acreage limitation of 51,200 acres for holders of potassium leases or permits. BLM proposes to increase this limitation to 80,000 acres. The acreage limitation for potassium is regulatory, and is not based on any statutory requirement. The statute limits the size of individual leases to 2,560 acres per lease. As the potash industry has matured, many mining operations are consolidating or closing. BLM believes that increasing the size of the State acreage limitation would allow for consolidation of mining properties and enhance development of marginal Federal reserves, thereby ensuring the statutory goal of ultimate maximum recovery. This proposed change would not create a situation where one company could monopolize Federal resources. This proposed change is reflected in the table in § 3503.37.

3. Change a provision currently in 43 CFR 3513.1–2, proposed to be in 43 CFR 3507.16, requiring the applicant for a preference right lease to submit a map showing certain land features, to require three maps, consistent with other provisions in these regulations, and with BLM's need for documentation to facilitate the review of these applications. While it is relatively easy for BLM to make duplicate copies of most application material, it is often difficult to duplicate maps, and obtaining additional maps from the applicant should facilitate BLM's review.

4. Incorporate uniformly BLM's current practice of not issuing leases covered by current Group 3500 to coal lessees and assignees not in compliance with section 2(a)(2)(A) of the Mineral Leasing Act, as amended. This means that BLM will not issue a lease under this part to anyone not in compliance with the diligence requirements for coal leases found in section 2(a)2(A). This change is the result of the proposed reorganization and clarification of these regulations and is reflected in proposed 43 CFR 3502.20 and 3511.11. Since this provision is consistent with current practice it will not have any significant impact on the industry. To date, BLM has denied fewer than 5 leases on the basis of this statutory provision.

5. Add a provision at 43 CFR 3502.42 specifying, consistent with the provisions of the Mineral Leasing Act, 30 U.S.C.184(g), that BLM will allow unqualified heirs to hold ownership for not more than two years, during which period the heir must either become qualified or divest himself or herself of the interest.

6. Eliminate provisions authorizing issuance of future interest prospecting permits currently in subpart 3507. BLM has rarely been called upon to issue such permits. We believe that the period of time available to current mineral interest holders, before the minerals vest in the United States, should be sufficient to allow those interest holders to determine whether there is a valuable mineral deposit present. If the mineral holder does demonstrate the existence of a valuable mineral deposit, BLM would continue, under this proposal, to issue future interest leases to the interest holder for these minerals.

7. Clarify in proposed subpart 3515, particularly § 3515.21, that lands exchanged must be of equal, rather than comparable, value. This change implements the provisions of the Federal Land Exchange Facilitation Act of 1988, which amended section 206 of FLPMA. The same Act also provided the government and any applicant greater flexibility than did previous requirements in achieving equality in an exchange. This flexibility is incorporated into the proposed regulation at proposed § 3515.22. Section 3515.12 clarifies that the exchange-specific provisions of 43 CFR part 2200 apply.

8. Clarify in proposed on § 3501.5 the definition of the term ''valuable deposit''. The current definition at 43 CFR 3500.0–5 is circular in that it uses the phrase ''valuable mine'' in describing the term ''valuable deposit''. The proposed rule would change ''valuable mine'' to ''profitable mine'' and thus clarifies that the profitability of mineral development is an important consideration in determining whether a person of ordinary prudence would be justified in the further expenditure of his or her labor and means with the reasonable prospect of successfully developing the mineral deposit. Accordingly, the proposed section on what information you have to provide to BLM to prove that you have found a valuable deposit, proposed section 3507.26, states that BLM may request supplemental data to determine, among other things, mining and processing costs and the profitability of mineral development.

9. Modify the requirements found in the current 43 CFR 3502.2–4(b) on the disclosure of the identity and citizenship of major stockholders to add disclosure of the percentage of their stock holdings. This change would assist BLM to enforce acreage limitations against those stockholders. The proposed rule would eliminate a requirement found in the current 43 CFR 3502.2–4(e) to submit such information on the basis of foreign residency. This information is not needed to enforce any statutory limitations.

10. Clarify at proposed § 3510.21 that BLM can issue noncompetitive fringe acre leases to extract sodium chloride to persons producing calcium chloride from an existing mine, under an authorization issued under 43 CFR part 3800 for locatable minerals. This addresses an issue restricted to a limited geographic area in California, where these two minerals are commingled.

Additionally, BLM seeks comment particularly on the following two proposals. These proposals are not reflected in the regulatory language published today. BLM may decide to undertake these changes, based on public comment.

11. Add a discussion of what makes lands ''compact.'' A similar discussion appeared in the regulations prior to the 1986 revisions. We are particularly interested in whether commenters perceive a need for BLM to define this term.

12. Reduce the number of copies of applications required from three copies to one in cases where there is no specified form, except for copies of maps.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA), and has found that the proposed rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**), and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the *''Written Comments''* section above, or contact us directly.

Federal Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the rule proposed by this action, which affects all the parts currently numbered as parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570 of title 43, under 44 U.S.C. 3507 and assigned clearance numbers 1004–0030, 1004–0121, and 1004–0142. Existing information collection requirements have been consolidated into part 3500 in this proposed rule. No new requirements have been added as a result of this proposal. The information collected under this part is used by BLM to determine if an applicant is qualified to hold a lease, license or prospecting permit for solid leasable minerals other than coal, oil and gas, geothermal, and oil shale on Federal lands. The information is required for the applicant to receive the benefit of a permit or lease from BLM.

BLM estimates the public reporting burden of these information collection sections to average 3½ hours for each response. By eliminating the requirement to describe the lands for many assignments and leases, this burden should be reduced for those activities. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the address listed above (see **ADDRESSES**) and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have as significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

These amendments to 43 CFR part 3500 will not result in any unfunded mandate to state, local or tribal governments in the aggregate, or to the private sector, of $100,000,000 or more in any one year.

Executive Order 12630

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the function of this regulatory action is to streamline regulations and eliminate unnecessary provisions, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property, or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author: The principal author of this rule is Jim Horan, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: (202) 452–5023 (Commercial or FTS).

List of Subjects

43 CFR Part 3500

Government contracts, Mineral royalties, Public lands—mineral resources, Reporting and recordkeeping requirements, Bonds.

43 CFR Part 3510

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3520

Government contracts, Public lands—mineral resources.

43 CFR Part 3540

Public lands—mineral resources.

43 CFR Part 3550

Public lands—mineral resources.

43 CFR Part 3560

Government contracts, Mineral royalties, Public lands—mineral resources, Surety bonds.

43 CFR Part 3570

Environmental protection, Government contracts, Indians—lands, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 27, 1996.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

Accordingly, as discussed in the preamble, and under the authority of 30 U.S.C. 181, 43 U.S.C. 1734, and section 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix), we propose to amend 43 CFR Chapter II as follows:

PARTS 3510, 3520, 3530, 3540, 3550, 3560, AND 3570—[REMOVED]

1. Remove Parts 3510, 3520, 3530, 3540, 3550, 3560, and 3570.

2. Remove the heading, Group 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale.

3. Revise part 3500 to read as follows:

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

Subpart 3501—Leasing of Solid Minerals Other Than Coal and Oil Shale-General

Sec.

3501.1 What is the scope of this part?
3501.5 What terms do I need to know to understand this part?
3501.10 What types of mineral use authorizations are allowed under this part?
3501.16 Does my permit or lease grant me an exclusive right to develop the lands covered by the permit or lease?
3501.17 Are there any general planning or environmental considerations that affect my permit or lease?
3501.20 If BLM approves my application for a use authorization under this part, when does it become effective?
3501.30 Can I appeal BLM's decisions under this part?

Subpart 3502—Qualification Requirements

3502.10 Who may hold leases and permits?
3502.13 Can foreign citizens hold permits or leases?
3502.15 Are there any additional restrictions on holdings of leases or interests in leases?
3502.20 Will BLM issue me a lease if I am not in compliance with the diligence requirements of section 2(a)(2)(A) of the Mineral Leasing Act, as amended?
3502.25 Where do I file evidence that I am qualified to obtain a permit or lease?
3502.26 Can I supplement or update my qualifications statement?
3502.27 If I am filing as an individual, what information do I have to provide?
3502.28 If I am an association or a partnership, what information do I have to provide?
3502.29 If I am a guardian or trustee of a trust holding on behalf of a beneficiary, what information do I have to provide?
3502.30 If I am a United States corporation, what information do I have to provide?
3502.33 If I represent an applicant as an attorney-in-fact, do I have to submit anything to BLM?
3502.34 What if there are other parties in interest?
3502.40 What happens if an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is issued?
3502.41 What happens to a permit or lease if a permittee or lessee dies?
3502.42 What happens if the heir is not qualified?

Subpart 3503—Areas Available for Leasing

3503.10 What areas are not available for leasing of any of the minerals covered by this part?
3503.11 Are there any other areas in which I cannot get a permit or lease for the minerals covered by this part?
3503.12 For what areas can I receive a sulphur lease or permit?
3503.13 For what areas can I receive a hardrock lease or permit?
3503.14 For what areas can I get a lease or permit for asphalt?
3503.15 How can I lease the gold or silver reserved to the United States on land I hold under a private land claim in New Mexico?
3503.16 May I obtain permits or leases for sand and gravel in Nevada under the terms of this part?
3503.20 What if the lands I'm interested in are administered by an agency other than BLM?
3503.21 What happens if the surface of the lands I'm interested in belongs to a non-Federal political subdivision or charitable organization?
3503.25 Can BLM issue permits and leases for Federal minerals underlying private surface?
3503.28 Does BLM incorporate any special requirements to protect the lands and resources?
3503.30 How should I describe the lands I'm applying for in my application?
3503.31 What if the lands are in States that are part of the Public Lands Survey System, but have not been surveyed on the ground, are not shown on the records as protracted surveys, or do not conform to the public land surveys?
3503.32 Are there any alternative methods of describing acquired lands?
3503.33 Are there any size or shape limitations on the lands I can apply for?
3503.36 Will BLM issue a lease for unsurveyed lands?
3503.37 Is there a limit to the acreage of lands I can hold under permits and leases?
3503.38 How does BLM compute my acreage holdings?
3503.39 Where do I file my application and other necessary documents?
3503.40 Will BLM make the information in my application available to the public?

Subpart 3504—Fees, Rental, Royalty and Bonds

3504.11 What forms of payment will BLM and MMS accept?
3504.12 What payments do I send to BLM and what payments do I send to MMS?
3504.15 What are the rental rates for the different commodities?
3504.16 When is my rental due after the first year of the lease?
3504.17 What happens if I do not pay my rental in a timely fashion?
3504.20 What are the requirements for paying royalties on production?
3504.21 How does BLM determine the royalty rate?
3504.22 How will I know what the royalty rate is on my lease production?
3504.25 Do I have to produce a certain amount per year?
3504.26 May I create overriding royalties on my Federal lease?
3504.50 Do I have to file a bond?
3504.51 How do I file my bond?
3504.55 What types of bonds are acceptable?
3504.56 If I have more than one lease or permit, may I combine bond coverage?
3504.60 Under what circumstances might BLM elect to change the amount of my bond?
3504.65 What happens to my bond should I fail to carry out my obligations under a permit or lease?
3504.66 Will I be required to restore my bond to the full amount if payment has been made from my bond?
3504.70 When will BLM terminate the period of liability of my bond?
3504.71 When will BLM release my bond?

Subpart 3505—Prospecting Permits

3505.10 What is a prospecting permit?
3505.11 How do I obtain a prospecting permit?
3505.12 How do I complete the application form?
3505.15 Is there an acreage limit for my application?
3505.20 Is there a fee or payment required with my application?
3505.25 How does BLM prioritize applications for prospecting permits?
3505.30 Can I amend or change my application once filed?
3505.31 May I withdraw my application once filed?
3505.40 After submitting my application, do I need to submit anything else?
3505.45 What is an exploration plan?
3505.50 How will I know if my application has been approved or rejected?
3505.51 May I correct or refile my application if BLM rejects it?
3505.55 What are my obligations to BLM under an approved prospecting permit?
3505.60 How long is my prospecting permit in effect?
3505.61 Can BLM extend the term of my prospecting permit?
3505.62 Under what conditions can I extend my prospecting permit?
3505.64 How do I apply for an extension?
3505.65 What information must I include in my request for extension?
3505.66 If approved, when is my extension effective?
3505.70 May I relinquish my prospecting permit?
3505.75 What happens if I fail to pay the rental?

3505.80 What happens when my permit expires?
3505.85 Can BLM cancel my prospecting permit for reasons other than failure to pay rental?

Subpart 3506—Exploration Licenses

3506.10 What is an exploration license?
3506.11 What must I do to obtain an exploration license?
3506.12 Who prepares and publishes the notice?
3506.13 What information must I provide to BLM for inclusion in my Notice of Exploration?
3506.14 What happens after I publish the Notice of Exploration?
3506.15 Who resolves differences and approves the license and participants?
3506.20 After my license is issued, may I modify my exploration plan?
3506.25 Once I have a license, what are my responsibilities?

Subpart 3507—Preference Right Leases

3507.11 What do I have to do to be entitled to a preference right lease?
3507.15 How do I apply for a preference right lease?
3507.16 What information must my application for a preference right lease include?
3507.20 Is there a fee or payment required with my application?
3507.25 Under what circumstances will BLM reject my application?
3507.26 What do I need to submit to demonstrate that I've found a valuable deposit?
3507.30 If I disagree with BLM's reasons for rejecting my preference right lease, may I appeal?

Subpart 3508—Competitive Leases

3508.11 What lands are available for competitive leasing?
3508.12 How do I get a competitive lease?
3508.14 How much time does BLM allow for a bid to be submitted?
3508.15 What information will the notice of lease sale include?
3508.16 What information will the detailed statement include?
3508.20 How will BLM conduct the sale and handle bids?
3508.21 What happens if I am the successful bidder?
3508.22 What happens if my bid is rejected?

Subpart 3509—Fractional and Future Interest Leases

3509.10 What are future interest leases?
3509.11 For what lands will BLM issue future interest leases?
3509.12 What if I am a mining owner or operator, and I am applying for a future interest lease as part of my existing operation?
3509.15 Who may apply for a future interest lease?
3509.16 How do I apply for a future interest lease?
3509.17 What information must I include in my application for a future interest lease?
3509.20 When does my future interest lease take effect?
3509.25 Under what conditions would BLM reject my application for a future interest lease?
3509.30 May I withdraw my application for a future interest lease?

Subpart 3510—Lease Terms and Conditions

3510.15 How long will my lease be in effect?
3510.20 Do certain leases allow me to mine other commodities as well?
3510.21 If I am mining calcium chloride, can I obtain a noncompetitive mineral lease to produce the commingled sodium chloride?
3510.25 What is meant by lease readjustment and lease renewal?
3510.26 What if I object to the terms and conditions BLM proposes for a readjusted lease?
3510.27 How will a lease renewal affect my priority as lessee?
3510.30 If I appeal BLM's proposed new terms, do I have to continue paying royalties or rentals while my appeal is being considered?
3510.50 How do I renew my lease?

Subpart 3511—Assignments and Subleases

3511.11 Once I am issued a permit or lease, can I assign or sublease it?
3511.12 Is there a fee for requesting an assignment or sublease?
3511.13 What do I submit to get BLM approval for an assignment of record title?
3511.16 How do I assign or transfer a sublease or operating rights to my lease or permit?
3511.18 Do I have to notify BLM if I intend to transfer an overriding royalty to another party?
3511.20 Will BLM approve my assignment or sublease if I have outstanding liabilities?
3511.25 If I assign my permit or lease, when do my obligations under the permit or lease end?
3511.30 What are the responsibilities of a sublessor and a sublessee?
3511.33 Does an assignment or sublease alter the permit or lease terms?

Subpart 3512—Waiver, Suspension, or Reduction of Rental and Minimum Royalties

3512.11 Can I be relieved of the lease requirements of rental, minimum royalty, or production royalty?
3512.12 What criteria does BLM consider in approving a waiver, suspension, or reduction in rental or minimum royalty, or a reduction in the royalty rate?
3512.15 How do I apply for relief?
3512.20 What is a suspension of operations and production?
3512.21 What is the effect of a suspension of operations and production?
3512.22 How do I apply for a suspension of operations and production?
3512.25 When will my suspension of operations and production take effect?
3512.26 When and how does my suspension of operations and production expire or terminate?
3512.30 What is a suspension of operations?
3512.31 What is the effect of a suspension of operations?
3512.32 How do I apply for a suspension of operations?
3512.33 When will my suspension of operations take effect?
3512.34 When and how does my suspension of operations expire or terminate?

Subpart 3513—Lease Relinquishments, Terminations, and Cancellations

3513.11 Can I relinquish my lease or any part of my lease?
3513.12 What should I include in a request for partial relinquishment?
3513.15 Where do I file my relinquishment?
3513.20 When is my relinquishment effective?
3513.25 When does my lease expire?
3513.30 Can my lease be canceled?
3513.31 Can BLM waive cancellation or forfeiture?
3513.32 Will BLM give me an opportunity to remedy a violation of the lease terms?
3513.50 What happens to a *bona fide* purchaser if the lease assigned to him or her is subject to cancellation?

Subpart 3514—Noncompetitive Leasing—Fringe Acreage Leases and Lease

Modifications

3514.11 If I already have a Federal lease, or the mineral rights on adjacent private lands, may I lease adjoining Federal land that contains the same deposits without competitive bidding?
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Authority: 5 U.S.C. 552; 7 U.S.C. 1011(f); 16 U.S.C. 90c–1, 460n–5, 460q–1, 460dd–2, 460mm–3, 508b, and 520; 29 U.S.C. 49g; 30 U.S.C. 189, 192c, 293, and 359; 31 U.S.C. 9701; 43 U.S.C. 387, 1733, and 1740; Sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

Subpart 3501—Leasing of Solid Minerals Other Than Coal and Oil Shale-General

§ 3501.1 What is the scope of this part?

This part applies to certain minerals leased under the mineral leasing acts and hardrock minerals leased under Reorganization Plan No. 3 of 1946 on any unclaimed, undeveloped area of available public domain or acquired lands where leasing of these specific minerals is allowed by law. Some areas allow only leases, not prospecting permits. Special areas identified in 43 CFR part 3580 are leased under this parts. Check that part to identify any special provisions that apply to those special areas.

§ 3501.5 What terms do I need to know to understand this part?

You need to know the following terms, which are used frequently in this part:

Act means one or more of the statutes referred to in the authority citation of this regulation, as appropriate.

Chiefly valuable means that land is more valuable for the development of sodium, sulphur or potassium than for any non-mineral disposition, or there is not a significant conflict between mineral extractions and any other disposition of lands.

Hardrock minerals means those locatable minerals for which a mineral patent may be obtained under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) if the mineral resource is on public domain land. They do not include leasable minerals, nor do they include oil, gas, coal and oil shale or mineral materials covered by the regulations in 43 CFR part 3600. Hardrock minerals do include, but are not limited to, copper, lead, zinc, magnesium, nickel, tungsten, gold, silver, bentonite, uranium, barite, feldspar and fluorspar.

Leasable minerals for this part means the chlorides, sulfates, carbonates, borates, silicates or nitrates of potassium or sodium and related products; sulphur on public lands in the States of Louisiana and New Mexico and on all acquired lands; phosphate, including associated and related minerals; asphalt in certain lands in Oklahoma; and Gilsonite (including all vein-type solid hydrocarbons).

Leasing includes prospecting permits, unless the context otherwise requires.

MMS means the Minerals Management Service.

Permit means prospecting permit, unless otherwise specified.

Valuable deposit means a mineral occurrence where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his or her labor and means, with a reasonable prospect of success in developing a profitable mine.

§ 3501.10 What types of mineral use authorizations are allowed under this part?

BLM issues several types of mineral use authorizations to qualified individuals. Certain types of authorizations do not apply to certain commodities.

(a) ''Prospecting permits'' allow you to explore for leasable mineral deposits on lands where BLM has determined that prospecting is necessary to determine the existence of a valuable deposit. Any qualified holder of a prospecting permit is entitled to a preference right lease if he or she discovers a valuable deposit of the mineral or determines the land to be chiefly valuable for sodium, sulfur or potassium as a result of prospecting efforts under the permit.

(b) ''Exploration licenses'' allow you to explore in areas which contain known deposits of a leasable mineral to obtain data. With an exploration license, you do not obtain any preference or other right to a lease.

(c) ''Preference right leases'' are issued to holders of prospecting permits who during the term of the permit demonstrate the discovery of a valuable deposit of the leasable mineral or hardrock mineral for which BLM issued the permit; and, for sodium, potassium and sulphur, prove that the lands are chiefly valuable for those minerals. The lease allows you to mine the deposit in accordance with an approved mine plan.

(d) ''Competitive leases'' are issued for known deposits of a leasable mineral or hardrock mineral by competitive bidding. The lease allows you to mine the deposit in accordance with an approved mine plan.

(e) ''Fringe acreage leases'' are issued noncompetitively for known deposits of a leasable mineral or hardrock mineral on Federal lands adjacent to existing mines on non-Federal lands when the deposits can only be mined as part of the existing mining operation.

(f) ''Lease modifications'' are used to add known deposits of the subject leasable mineral or hardrock mineral to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3501.16 Does my permit or lease grant me an exclusive right to develop the lands covered by the permit or lease?

No. Your permit or lease gives you an exclusive right to the mineral, but not to the lands. BLM may allow other uses or disposal of the lands, including leasing of other minerals, as long as those uses or disposal will not unreasonably interfere with your operation. Any other permits or leases covering the lands contained within your permit or lease will contain suitable stipulations based on consideration of safety, environmental protection, conservation, maximum recovery of the resource, and other such factors, for simultaneous operation. You must also make all reasonable efforts to avoid interference with other authorized uses.

§ 3501.17 Are there any general planning or environmental considerations that affect my permit or lease?

(a) BLM will not issue a permit or lease that does not conform with the decisions, terms and conditions of an applicable comprehensive land use plan.

(b) BLM or the surface management agency will comply with NEPA before issuing you a permit or lease.

(c) BLM will issue permits and leases only in a manner consistent with any unsuitability designation made under 43 CFR part 1600.

§ 3501.20 If BLM approves my application for a use authorization under this part, when does it become effective?

BLM will approve your use authorization effective the first day of the month after BLM signs it, unless you request, in writing, that it be effective the first day of the month in which it is approved. This applies to all leases, licenses, permits, transfers and assignments in this part, unless a specific regulation provides otherwise.

§ 3501.30 Can I appeal BLM's decisions under this part?

Any party adversely affected by a BLM decision under this part may appeal the decision in accordance with 43 CFR parts 4 and 1840.

Subpart 3502—Qualification Requirements

§ 3502.10 Who may hold leases and permits?

You may hold an interest in leases and permits under this part only if you are:

(a) An adult citizen of the United States;

(b) An association (including partnerships and trusts) of such citizens;

(c) A corporation organized under the laws of the United States or of any State or territory thereof; or

(d) A legal guardian or trustee of a minor.

§ 3502.13 Can foreign citizens hold permits or leases?

No. Individual foreign citizens cannot hold permits or leases. Citizens of foreign countries may hold stock in United States corporations that hold leases or permits so long as the laws, customs, or regulations of their country do not deny similar privileges to citizens or corporations of the United States. A list of the countries which deny such privileges is available from any BLM State office.

§ 3502.15 Are there any additional restrictions on holding leases or interests in leases?

Yes. If you are a member of, or delegate to, Congress, a Resident Commissioner, or any employee of the Department of the Interior, except as provided in part 20 of this title, you may not acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department-see 43 CFR part 20; Member of Congress-see R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433)

§ 3502.20 Will BLM issue me a lease if I am not in compliance with the diligence requirements of section 2(a)(2)(A) of the Mineral Leasing Act, as amended?

BLM will not issue, modify or renew a lease, or approve a transfer of any lease or interest in a lease, for any of the minerals covered by this part unless you are in compliance with section 2(a)(2)(A) of the Mineral Leasing Act, as amended (compliance is determined for Federal coal leases in accordance with 43 CFR 3462.1–2(e)). If BLM issues you a lease when you are in violation, BLM will cancel your lease as outlined in subpart 3513 of this part.

§ 3502.25 Where do I file evidence that I am qualified to obtain a permit or lease?

You must file evidence with BLM that you meet the qualification requirements. You may file this evidence separately from your application for a permit or lease, but you should file it in the same office where you filed your application.

§ 3502.26 Can I supplement or update my qualifications statement?

After BLM accepts your qualifications, you may submit additional information to the same BLM office by referring to the serial number of the record in which your evidence is filed. You must make any changes to your qualifications statement in writing. It is your responsibility to assure that such evidence is current, accurate and complete.

§ 3502.27 If I am filing as an individual, what information do I have to provide?

If you are an individual, you must submit a signed statement showing:

(a) You are a U.S. citizen; and

(b) Your acreage holdings, including any holding through a corporation, association, or partnership in which you are the beneficial owner of more than 10% of the stock or other instruments of control, do not exceed the limit for the mineral concerned. (See subpart 3503 of this part for a discussion of acreage holdings.)

§ 3502.28 If I am an association or a partnership, what information do I have to provide?

If you are an association, such as a partnership, a member or authorized attorney-in-fact must submit the following:

(a) A signed statement setting forth:

(1) The names, addresses, and citizenship of all members owning or controlling 10 percent or more of the association or partnership;

(2) The names of the members authorized to act on behalf of the association or partnership; and

(3) That the association or partnership's acreage holdings for the particular mineral concerned do not exceed the allowable acreage holdings for that mineral.

(b) A copy of the articles of the association or partnership.

§ 3502.29 If I am a guardian or trustee for a trust holding on behalf of a beneficiary, what information do I have to provide?

If you are a guardian or trustee for a trust holding on behalf of a beneficiary, you must submit the following:

(a) A signed statement setting forth:

(1) The citizenship of the beneficiary;

(2) Your citizenship;

(3) The grantor's citizenship, if the trust is revocable; and

(4) That the acreage holdings of the beneficiary, the guardian or trustee, or the grantor, if the trust is revocable, do not exceed that allowed.

(b) A copy of the court order or other document authorizing or creating the trust or guardianship.

§ 3502.30 If I am a United States corporation, what information do I have to provide?

If you are a corporation, an officer or authorized attorney-in-fact must submit a signed statement setting forth:

(a) The State or territory in which the corporation is incorporated;

(b) The name and citizenship, and percentage of stock owned, held, or controlled by, of any stockholder owning, holding, or controlling more than 10 percent of the stock of the corporation;

(c) The names of the officers authorized to act on behalf of the corporation; and

(d) That the corporation's acreage holdings, and those of any stockholder identified under paragraph (b) of this section, do not exceed that allowed.

§ 3502.33 If I represent an applicant as an attorney-in-fact, do I have to submit anything to BLM?

You must submit evidence of your authority to act on behalf of the applicant. The applicant must also submit a separate statement as to qualifications and acreage holdings unless the power of attorney specifically authorizes and empowers you to make or to execute such statements on his or her behalf.

§ 3502.34 What if there are other parties in interest?

If you are not the sole party in interest to a permit or lease, you must submit with your application the names of all other parties who hold or will hold any interest in the application or in the permit or lease, when issued. All interested parties must furnish appropriate evidence of their

qualifications to hold permit or lease interest.

§ 3502.40 What happens if an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is issued?

(a) If probate of the estate has been completed or is not required, BLM will issue the permit or lease to the heirs or devisees, or their guardian. BLM will recognize the heirs or devisees or their guardian as the record title holders of the permit or lease. They must file the following information with BLM:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(2) A statement signed by each of the heirs or devises with reference to citizenship and holdings similar to that required by § 3502.27. If the heir or devisee is a minor, the statement must be signed by the guardian or trustee.

(b) If probate is required but has not been completed, BLM will issue the permit or lease to the executor or administrator of the estate. BLM will consider the executor or administrator to be the record title holder of the permit or lease. He or she must submit the following information:

(1) Evidence that the person who, as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign those forms;

(2) Evidence that the heirs or devisees are the only heirs or devisees of the deceased; and

(3) A statement signed by each heir or devisee concerning citizenship and holdings, as required by § 3502.27.

§ 3502.41 What happens to a permit or lease if a permittee or lessee dies?

If the permittee or lessee dies, BLM will recognize as the record title holder of the permit or lease:

(a) The executor or administrator of the estate, if probate is required but has not been completed and they have filed the evidence required by § 3502.40(b); or

(b) The heirs or devisees, if probate has been completed or is not required, if they have filed evidence required by § 3502.40(a).

§ 3502.42 What happens if the heir is not qualified?

Consistent with the provisions of the Mineral Leasing Act (30 U.S.C. 184(g)), BLM will allow unqualified heirs to hold ownership for not more than two years. During that period, the heir must either become qualified or divest himself or herself of the interest.

Subpart 3503—Areas Available for Leasing

§ 3503.10 What areas are not available for leasing of any of the minerals covered by this part?

The Secretary of the Interior is prohibited from leasing lands on any of the following Federal areas:

(a) Land recommended for wilderness allocation by the surface managing agency;

(b) Lands within BLM wilderness study areas;

(c) Lands designated by Congress as wilderness study areas; and

(d) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety Sixth Congress (House Document Number 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

§ 3503.11 Are there any other areas in which I cannot get a permit or lease for the minerals covered by this part?

You may not obtain a prospecting permit or lease for the solid leasable and hardrock minerals in the following areas:

(a) Lands within the boundaries of any unit of the National Park System, except as expressly authorized by law;

(b) Lands within Indian Reservations, except the Uintah and Ouray Indian Reservation, Hillcreek Extension, State of Utah;

(c) Lands within incorporated cities, towns and villages;

(d) Lands within the National Petroleum Reserve-Alaska and oil shale reserves and within the national petroleum reserves;

(e) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals, except leasable minerals, essential to the defense of the country;

(f) Lands acquired by foreclosure or otherwise for resale;

(g) Acquired lands reported as surplus under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*);

(h) Any tidelands or submerged coastal lands within the continental shelf adjacent or littoral to any part of lands within the jurisdiction of the United States; and

(i) Lands located adjacent to or within Searles Lake, California are not available for potassium prospecting permits. BLM will lease potassium in this area by competitive bidding.

§ 3503.12 For what areas can I receive a sulphur lease or permit?

BLM may issue sulphur leases and permits for any public domain lands in the States of Louisiana and New Mexico. You can also obtain sulphur leases or permits for Federal Acquired lands nationwide, subject to the exceptions listed in 43 CFR 3503.10 and 3503.11.

§ 3503.13 For what areas can I receive a hardrock lease or permit?

Subject to the consent of the surface managing agency, you can obtain hardrock leases and permits only in the following areas:

(a) Lands identified in the Reorganization Plan No. 3 of 1946, for which jurisdiction for mineral leasing was transferred to the Secretary of the Interior. These include lands originally acquired under the following acts:

(1) 16 U.S.C. 520 (Weeks Act);

(2) Title II of the National Industrial Recovery Act (40 U.S.C. 401, 403a and 408;

(3) The 1935 Emergency Relief Appropriation Act (48 Stat. 115 and 118);

(4) Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750 and 781); and

(5) The Act of July 22, 1937 (7 U.S.C. 1011(c) and 1018) [repealed];

(b) Lands added to the Shasta National Forest by Act of March 19, 1948 (62 Stat. 83);

(c) Public Domain Lands within the National Forests in Minnesota (16 U.S.C. 508(b));

(d) Lands in New Mexico that are portions of Juan Jose Lobato Grant (North Lobato) and Anton Chica Grant (El Pueblo) as described in section 1 of the Act of June 28, 1952 (66 Stat. 285);

(e) Lands in the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Areas;

(f) The following National Park Lands:

(1) Lake Mead National Recreation Area;

(2) Ross Lake and, in accordance with 16 U.S.C. 906–1(b), Lake Chelan Recreation Area;

(3) Glen Canyon National Recreation Area; and

(4) Lands in the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area;

(g) Lands patented to the State of California for park or other purposes where minerals were reserved to the United States; and

(h) White Mountains National Recreation Area, Alaska.

§ 3503.14 For what areas can I get a lease or permit for asphalt?

You may obtain leases for asphalt only on certain Federal lands in the State of Oklahoma. You may not obtain prospecting permits for asphalt.

§ 3503.15 How can I lease the gold or silver reserved to the United States on land I hold under a private land claim in New Mexico?

If you are the holder of the remaining record title interest or operating rights interest in confirmed private land grants in the State of New Mexico you can lease gold and silver reserved to the United States. 43 CFR part 3580, subpart 3581 discusses the requirements for leasing silver and gold.

§ 3503.16 May I obtain permits or leases for sand and gravel in Nevada under the terms of this part?

You may not get new leases or permits. However, any sand and gravel lease already issued for certain lands patented to the State of Nevada can be renewed at the expiration of its initial term, for successive additional terms of 5 years.

§ 3503.20 What if the lands I'm interested in are administered by an agency other than BLM?

(a) BLM will lease or permit public domain lands administered by other agencies only after consulting with the surface management agency. When required by law, BLM will also obtain the consent of the surface management agency.

(b) Before issuing leases or permits on acquired lands, BLM must obtain written consent from the surface management agency. For preference right lease applications, where the surface management agency has consented to the prospecting permit, BLM will consult with that agency before approving the lease. At that time, the surface management agency may request supplemental data regarding surface disturbance and reclamation.

(c) If a surface management agency requires special stipulations to a lease or permit as a condition of granting its consent, or refuses to consent to the issuance of the lease or permit, you may pursue any administrative remedies provided by that agency. If you notify BLM within 30 days of receipt of BLM's decision that you have requested the surface management agency to reconsider its decision, BLM will suspend the time for filing an appeal under 43 CFR part 4 until a decision is reached by the surface management agency.

§ 3503.21 What happens if the surface of the lands I'm interested in belongs to a non-Federal political subdivision or charitable organization?

If the United States has conveyed or transferred the surface of the lands included within your permit or lease application to any State or political subdivision, agency or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, BLM must notify them by certified mail of your application for a permit or lease. BLM will give the surface owner a reasonable time, not to exceed 90 days, to suggest any lease stipulations necessary for the protection of existing surface improvements or uses, provide reasons for the stipulations, or file any objections to the issuance of the lease or permit. BLM will make the final decision whether to issue or deny the lease and which, if any, stipulations identified by the surface owner will be included within the lease terms, based on how the interests of the United States would best be served.

§ 3503.25 Can BLM issue permits and leases for Federal minerals underlying private surface?

Yes. Where the United States has disposed of certain lands under specific land disposal statutes, and those statutes reserved certain leasable or hardrock minerals to the United States together with the right to prospect for, mine, and remove the minerals under applicable leasing laws and regulations, BLM will manage and dispose of those minerals under this part.

§ 3503.28 Does BLM incorporate any special requirements to protect the lands and resources?

BLM will specify stipulations, including those specified by the surface management agency or private surface owner, to your permit or lease to ensure adequate utilization and protection of the lands and their resources. (See also 43 CFR part 3580.)

§ 3503.30 How should I describe the lands I'm applying for in my application?

If the lands are in States that are part of the Public Land Survey System and if those lands have been surveyed or are included within an approved protracted survey, describe the lands by legal subdivision, section, township, and range.

§ 3503.31 What if the lands are in States that are part of the Public Lands Survey System, but have not been surveyed on the ground, are not shown on the records as protracted surveys, or do not conform to the public land surveys?

Describe such lands by metes and bounds in accordance with standard survey practices. Connect your description by courses and distances between successive angle points to an official corner of the public land surveys or, for accreted lands, to an angle point that connects to a point on an official corner of the public lands survey to which the accretions belong.

§ 3503.32 Are there any alternative methods of describing acquired lands?

Yes. You may describe acquired lands in the manner as discussed above. You may instead use the description shown on the deed or other document that conveyed title to the United States. If you are applying for less than the entire tract acquired by the United States, you must describe the land using courses and distances tied to a point on the boundary of the requested tract. Where a tract number has been assigned by the acquiring agency to the identical tract you wish to lease or permit, you may describe those lands by the tract number, as long as you include a map which clearly shows the location of the lands sought with respect to the administrative unit or the project of which they are a part. In States outside of the Public Lands Survey System, you should describe the lands by tract number, and include a map.

§ 3503.33 Are there any size or shape limitations on the lands I can apply for?

Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which you may apply. The lands must be in reasonably compact form.

§ 3503.36 Will BLM issue a lease for unsurveyed lands?

All leased areas must be surveyed. If you are applying for a permit or lease on lands for which BLM or the surface management agency determines that a survey is needed, you will be required to pay for the survey. If BLM intends to issue a lease by competitive bidding, BLM will pay for surveying the lands.

§ 3503.37 Is there a limit to the acreage of lands I can hold under permits and leases?

Yes. The limits are summarized in the table.

Affected mineral	Nationwide acreage limitation	Maximum acreage in any one State	Maximum acreage for a permit or lease
Asphalt	(Applies to OK only)	2,560 acres	640
Gilsonite	(Not applicable)	7,680 acres	5,120
Hardrock minerals	(Not applicable)	20,480 acres total, 10,240 acres in leases, unless increased up to 20,480 for orderly mine development.	2,560
Phosphate	Not to exceed 20,480 acres in permits or leases.	(Not applicable)	2,560
Potassium	(Not applicable)	80,000 acres (larger if necessary for extraction of sodium from concentrated brines in connection with an existing mining operation).	2,560
Sodium	(Not applicable)	5,120 acres (may be increased to 15,360 acres to facilitate an economic mine).	2,560
Sulphur	(Not applicable)	1,920 acres in 3 leases or permits	640

§ 3503.38 How does BLM compute my acreage holdings?

BLM computes acreage holdings as follows:

(a) The maximum acreage in any one State refers to either public domain lands or acquired lands. Under a lease or permit for acquired lands, you may not hold acreage for leasable minerals greater than the public domain acreage for the same minerals allowed to be held under the Act. BLM will not charge public domain lease holdings against acquired lands lease holdings and vice versa; these holdings are not interchangeable.

(b) Where the United States owns only a fractional interest in the mineral resources of lands, BLM will charge only that part of the total acreage involved in your lease or permit which is proportionate to the United States' interest as acreage holdings. Example: If the United States holds a 25% interest in 200 acres, you will be charged with 50 acres (200×.25).

(c) BLM will not charge any acreage in a future interest lease against your acreage limitations until the date the lease takes effect.

(d) Your acreage holdings for acreage limitation purposes will be proportionate to your direct interest and your indirect interest through stock or other instruments of ownership or control of the association or corporation in the total lease and permit acreage. You will not, however, be charged with your share of any acreage holdings of a corporation or association unless you own 10 percent or more interest through stock or other instruments of ownership or control of the association or corporation in the association or corporation.

§ 3503.39 Where do I file my application and other necessary documents?

BLM requires that your initial application be filed in the State Office administering the lands for which you are applying or in the BLM office specified in our correspondence with you. BLM considers a document to be filed when it is received in that office.

§ 3503.40 Will BLM make the information in my application available to the public?

All information that you submit under these regulations is subject to disclosure upon request, unless the information is exempt from disclosure under the regulations implementing the Freedom of Information Act (5 U.S.C. 552) at 43 CFR part 2, or unless otherwise provided in this part.

Subpart 3504—Fees, Rental, Royalty and Bonds

§ 3504.11 What forms of payment will BLM and MMS accept?

Any payment you submit must be by U.S. currency, postal money order, or negotiable instrument payable in U.S. currency. Payments made to MMS may also be made by electronic funds transfer.

§ 3504.12 What payments do I send to BLM and what payments do I send to MMS?

(a) *Filing fees and rentals.*

(1) You should pay all filing fees and all first-year rentals and all bonus bids for leases to the BLM State office with jurisdiction over the lands you are interested in. Make your instruments payable to the Department of the Interior-Bureau of Land Management. See 43 CFR part 1800, subpart 1821 for a list of BLM addresses.

(2) You should pay all second-year and subsequent rentals and all other payments for leases to the Department of the Interior-Minerals Management Service.

(b) *Royalties.* You should pay all royalties on producing leases and all payments under leases in their minimum production period to the MMS.

§ 3504.15 What are the rental rates for the different commodities?

Rental rates for prospecting permits for all commodities are $.50 per acre. Rental rates for leases for each commodity are shown in the table. The rental payment must be for the total acreage. Round up any fractional acreage to the next highest acre. If you do not know the exact acreage, compute the total acreage by assuming each of the smallest subdivisions is 40 acres. Pay the minimum rental or the per-acre rental, whichever is greater. The minimum rental is $20 per lease or permit for all commodities except asphalt, which has no minimum rental.

Annual lease rental per acre	Phosphate	Sodium	Sulphur/Gilsonite	Asphalt	Hardrock
1st year	$.25	$.25	$.50	$.25	$1
2nd year	.50	.50	.50	.50	1
3rd year	.50	.50	.50	.50	1
4th year	1	.50	.50	.50	1
5th year	1	.50	.50	.50	1
6th year through lease end	1	1	.50	1	1

§ 3504.16 When is my rental due after the first year of the lease?

Pay the rental in advance each year on or before the anniversary of the effective date of the lease. You must pay rental for each acre or fraction of an acre within your lease as long as the lease is in effect. BLM will credit your rental for any year against the first royalties as the royalties accrue under the lease during that year.

§ 3504.17 What happens if I do not pay my rental in a timely fashion?

BLM will notify you that unless you pay within 30 days from receipt of the notification, BLM will take action to cancel your lease.

§ 3504.20 What are the requirements for paying royalties on production?

You must pay royalties on any production from your lease in accordance with the terms specified in the lease. See § 3504.25 for minimum royalty amounts. You must pay royalty on a percentage of the quantity or gross value of the output of the produced commodity at the point of shipment to market.

§ 3504.21 How does BLM determine the royalty rate?

BLM determines the royalty rate on a case-by-case basis, subject to certain minimum royalty rates:

(a) The royalty rate for phosphate and sulphur cannot be less than 5% of the gross value of the output of the commodity or related mineral.

(b) The royalty rate for potassium and sodium cannot be less than 2% of the quantity or gross value of the output of the commodity or related product at the point of shipment to market.

(c) There is no minimum royalty rate for gilsonite and hardrock minerals.

(d) The royalty rate for asphalt cannot be less than 25 cents per ton of 2,000 pounds of marketable production.

§ 3504.22 How will I know what the royalty rate is on my lease production?

If BLM offered the lease competitively, the rates are in the notice of lease sale. If you applied for a noncompetitive lease, BLM will send you a royalty rate schedule for your concurrence and signature before we issue the lease. BLM attaches production royalty rates to, and makes them a part of, all leases. BLM determines the rate on an individual case basis before we offer the lease.

§ 3504.25 Do I have to produce a certain amount per year?

You are required to produce a minimum amount or pay a minimum royalty in lieu of production each lease year, beginning with the sixth lease year or the first full year of a renewed or readjusted lease. This requirement applies to all mineral leases described in part 3500 that BLM issues, reviews, or readjusts after April 22, 1996. The minimum royalty payment is $3 per acre or fraction of an acre payable in advance. BLM will credit this payment to your production royalties for that year only. You are exempt from these minimum production and royalty requirements if you have hardrock mineral leases or development or operating agreements subject to escalating rentals.

§ 3504.26 May I create overriding royalties on my Federal lease?

Yes. However, if BLM determines that the overriding royalty interest you created might cause premature abandonment of the property or cause marginally economic or low grade deposits to not be mined, BLM will issue a decision ordering you to reduce or suspend the overriding royalty to as little as 1% of the gross value at point of royalty assessment. Where more than one overriding royalty interest is involved, BLM will apply any suspension or reduction to the respective interests in the manner agreed upon by the interest holders. In the absence of an agreement, BLM will apply the suspension or reduction in inverse order of the dates the overriding interests were created.

§ 3504.50 Do I have to file a bond?

Yes. BLM will establish individual permit and lease bond amounts on a case-by-case basis. In making this determination, BLM will consider the estimated cost of reasonable stabilization and reclamation of the areas to be disturbed and conformance with permit and lease terms. The minimum bond requirement for prospecting permits is $1,000. The minimum bond requirement for leases is $5,000.

§ 3504.51 How do I file my bond?

File your bond in the BLM State office where you applied for a permit or lease. You must use an approved BLM form. File one copy, executed by you as principal or, in the case of surety bonds, by both you and an acceptable surety.

§ 3504.55 What types of bonds are acceptable?

You can file either a personal bond or a surety bond.

(a) Personal bonds may be in the form of:

(1) Cash;

(2) Cashier's check;

(3) Certified check; or

(4) Negotiable U.S. Treasury bonds of a value equal to the amount of the bond. If you submit Treasury bonds, include a conveyance giving the Secretary full authority to sell the securities in case you default in your performance of the terms and conditions of your lease or permit.

(b) Surety bonds must be issued by qualified surety companies approved by the Department of the Treasury. A list of qualified sureties is available from any BLM State Office.

§ 3504.56 If I have more than one lease or permit, may I combine bond coverage?

Yes. In lieu of separate bonds for each lease or permit, you may file a bond to cover all leases and permits for a specific mineral in any one State, or nationwide. BLM establishes the amount of the bond; however, the minimums are shown below:

(a) Statewide bonds will be no less than $25,000. File these bonds in the BLM State Office for the State where your leases are located.

(b) Nationwide bonds will be no less than $75,000. File these bonds in any BLM State Office.

§ 3504.60 Under what circumstances might BLM elect to change the amount of my bond?

BLM may increase or decrease the amount of your bond when BLM determines that a change in coverage is appropriate.

§ 3504.65 What happens to my bond should I fail to carry out my obligations under a permit or lease?

BLM will take payment from your bond to cover any obligations on which you default. Your bond will be reduced accordingly. If the surety makes a payment, BLM will reduce the face amount of the surety bond and the surety's liability by the amount of the payment.

§ 3504.66 Will I be required to restore my bond to the full amount if payment has been made from my bond?

Yes. After any default, BLM will notify you of the amount needed to bring your bond up to the required level. We will give you no more than six months to post a new bond or increase the existing bond to its pre-default level. You may elect to file separate or substitute bonds for each lease or permit. If you do not replace your bond, BLM may cancel the leases or permits covered by the bond.

§ 3504.70 When will BLM terminate the period of liability of my bond?

BLM will terminate the period of liability of a surety or other provider of

a bond at any time. The bond provider must provide 30 days notice to BLM and to the principals whose obligations are secured. You may not conduct any operations after a bond is terminated, without providing a new bond satisfactory to BLM. BLM will also terminate the period of liability on an old bond once a new bond has been filed and BLM accepts it.

§ 3504.71 When will BLM release my bond?

BLM will release your bond when we have determined, after the passage of a reasonable period of time, that you have paid all royalties, rentals, penalties, and assessments, satisfied all permit or lease obligations, reclaimed the site, and taken effective measures to ensure that the mineral prospecting or development activities will not have an adverse effect on surface or subsurface resources.

Subpart 3505—Prospecting Permits

§ 3505.10 What is a prospecting permit?

(a) A prospecting permit gives you, as the permittee, the exclusive right to prospect on and explore lands available for leasing to determine the existence of a valuable deposit of:

(1) Phosphate;

(2) Potassium;

(3) Sulphur;

(4) Sodium

(5) Gilsonite; or

(6) A hardrock mineral.

(b) You may remove only material needed to demonstrate the existence of a valuable mineral deposit.

§ 3505.11 How do I obtain a prospecting permit?

You must provide three copies of the official BLM application form and file it with the BLM office with jurisdiction over the lands you are interested in.

§ 3505.12 How do I complete the application form?

Your application must be legible and dated. It must contain your or your agent's original signature. Your application must also include:

(a) Your name and address;

(b) A statement of your qualifications and holdings (See subpart 3503 of this part);

(c) A complete and accurate land description in compliance with subpart 3502 of this part;

(d) Three copies of any maps if needed to accompany the description; and

(e) The name of the commodity or commodities for which you are applying.

§ 3505.15 Is there an acreage limit for my application?

The acreage in your application must not exceed or cause your holdings for that mineral to exceed the maximum allowed under the permit. BLM cannot issue a permit or lease if it causes you to exceed the State or nation-wide limits. See the table at § 3503.37.

§ 3505.20 Is there a fee or payment required with my application?

Yes. You must include with your application:

(a) A nonrefundable filing fee of $25; and

(b) The first year's rental, as shown in § 3504.15.

§ 3505.25 How does BLM prioritize applications for prospecting permits?

BLM will prioritize applications based on the time of filing. Where more than one application is filed at the same time for the same commodity on the same lands, BLM will hold a public drawing in accordance with 43 CFR part 1820, subpart 1821 to determine priority.

§ 3505.30 Can I amend or change my application once filed?

Yes. However, if your amendment adds lands, BLM will assign priority to your amended application for such additional lands from the date you filed the amended application. You must send the rental for the added lands with your amended application. You do not need to submit additional filing fees. You cannot exceed the acreage limitations specified in § 3503.37.

§ 3505.31 May I withdraw my application once filed?

Yes. If you withdraw your application in whole or in part before BLM signs the permit, your rental payment will be refunded proportionate to the extent of your withdrawal. BLM will retain the filing fee.

§ 3505.40 After submitting my application, do I need to submit anything else?

Yes. After initially reviewing your permit application, but before issuing the prospecting permit, BLM will require you to submit three copies of an exploration plan. You must also submit a bond. See subpart 3504 of this part, especially § 3504.50, for information on bonds.

§ 3505.45 What is an exploration plan?

An exploration plan shows how you intend to determine the existence and workability of a valuable deposit. Your exploration plan must, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under your plan and to whom BLM will deliver notices and orders;

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that your proposed exploration may affect, and the present land use in and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment you will use;

(2) The measures you will take to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures you will take for surface reclamation, which must include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Other data which BLM may require.

§ 3505.50 How will I know if my application has been approved or rejected?

If BLM accepts your application, we will issue your lease or permit. If BLM rejects your application, we will issue a decision document to you by certified mail (return receipt requested). In it BLM will:

(a) Detail the reasons for rejecting your application;

(b) Identify any items you will need to correct in your application; and

(c) Describe how you can appeal an adverse decision.

§ 3505.51 May I correct or refile my application if BLM rejects it?

If you file a new, corrected application for the same lands within 30 days of receipt of the rejection, BLM will apply the nonrefundable filing fee and rental payment submitted with your original application to the new application, provided the serial number of the original application is shown on your new application. BLM will establish priority for the permit as of the date the new application is filed. If you do not file a new application within 30 days of rejection, only your rental payment will be refunded.

§ 3505.55 What are my obligations to BLM under an approved prospecting permit?

You must:

(a) Pay your annual rental in a timely fashion. See §§ 3504.15 and 3504.16;

(b) Comply with all permit terms and stipulations attached to the permit by the surface management agency;

(c) Conduct only those exploration activities approved as part of your existing exploration plan; and

(d) Discontinue activities following expiration of the initial term unless and until your permit has been extended by BLM.

§ 3505.60 How long is my prospecting permit in effect?

Your prospecting permit will be effective for an initial term of 2 years.

§ 3505.61 Can BLM extend the term of my prospecting permit?

BLM may extend prospecting permits for phosphate and hardrock for a period not to exceed 4 years, and for potassium and Gilsonite a period not to exceed 2 years. Sodium and sulphur prospecting permits cannot be extended.

§ 3505.62 Under what conditions can I extend my prospecting permit?

Your permit may be extended if you can prove that:

(a) You have explored with reasonable diligence and been unable to determine the existence and workability of a valuable deposit covered by the permit. Reasonable diligence means that, in the opinion of BLM, you have drilled a sufficient number of core holes or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) Your failure to perform diligent prospecting activities was due to conditions beyond your control.

§ 3505.64 How do I apply for an extension?

There is no application form. You must request an extension at least 90 days prior to expiration of the permit. Accompany your request with a nonrefundable filing fee of $25; and the first year's rental, in accordance with §§ 3504.15 and 3504.16.

§ 3505.65 What information must I include in my request for extension?

Your request must:

(a) Demonstrate that you have met the conditions for extension set out in 43 CFR 3505.62;

(b) Describe your previous diligent prospecting activities on the permit; and

(c) Show how much additional time you need to complete prospecting work.

§ 3505.66 If approved, when is my extension effective?

Your permit extension will become effective as of the date BLM approves it, or on the expiration of the original permit, whichever is later.

§ 3505.70 May I relinquish my prospecting permit?

Yes. You may relinquish the entire prospecting permit or any legal subdivision thereof. A partial relinquishment must clearly describe the exact acreage you want to relinquish. BLM will not accept a relinquishment if you are not in compliance with the requirements of your permit. Once BLM accepts the request, your relinquishment will be effective as of the date you filed it with BLM. The lands you relinquished, if otherwise available, will be open to any new applications immediately after BLM notes the relinquishment on the official status records. If you relinquish part or all of your permit, you lose any right or entitlement to any preference right lease to the lands covered by the relinquishment.

§ 3505.75 What happens if I fail to pay the rental?

Your prospecting permit will automatically terminate if you fail to pay the rental on or before the anniversary date of the permit. BLM will note the termination of your permit for failure to pay rental on the official status records. Upon notation, BLM will make the lands covered by the permit available for filing of new permit applications.

§ 3505.80 What happens when my permit expires?

Your permit will expire at the end of its initial or extended term, as applicable, without notice. The lands will be available for new applications 60 days after expiration, unless you timely file for an extension, or you file an application for a preference right lease.

§ 3505.85 Can BLM cancel my prospecting permit for reasons other than failure to pay rental?

Yes. BLM can cancel your permit if you fail to comply with the Mineral Leasing Act, any of the other acts applicable to your specific permit, these regulations, or any of the permit terms or stipulations. BLM will provide you 30 days notice, within which you must correct your default. If your default continues, BLM may cancel your permit. BLM's waiver of one particular cause for cancellation will not prevent BLM from canceling your permit for any other cause, or for the same cause occurring at any other time. Unless you file an appeal, BLM will note the cancellation of your permit on BLM's official status records, at which time the lands covered by the permit will be available for filing of new applications by any qualified applicant.

Subpart 3506—Exploration Licenses

§ 3506.10 What is an exploration license?

An exploration license allows you to explore known, unleased mineral deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3506.11 What must I do to obtain an exploration license?

Apply by submitting an exploration plan as described in subpart 3505 of this part, along with your request for an exploration license. No specific form is required. When BLM approves the exploration plan, we will attach the approved plan to, and make it a part of, the license. You must also publish a Notice of Exploration inviting others to participate in exploration under the license on a pro-rata cost-sharing basis.

§ 3506.12 Who prepares and publishes the notice?

BLM prepares the notice using your information and posts the notice and your exploration plan in the BLM office for 30 days. You must publish the Notice of Exploration once a week for three consecutive weeks in at least one newspaper of general circulation in the area in which the lands are located.

§ 3506.13 What information must I provide to BLM for inclusion in my Notice of Exploration?

You must include:

(a) Your name and address;

(b) A description of the lands;

(c) The address of the Bureau office where your exploration plan will be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3506.14 What happens after I publish the Notice of Exploration?

Any person who seeks to participate in the exploration program must notify you and BLM in writing within 30 days after the final publication and BLM posting.

§ 3506.15 Who resolves differences and approves the license and participants?

BLM does, by issuing the license naming the participants and acreage covered. BLM may also establish core hole spacing and resolve any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3506.20 After my license is issued, may I modify my exploration plan?

Yes. BLM may approve modifications of your exploration plan upon your request.

§ 3506.25 Once I have a license, what are my responsibilities?

You must provide to BLM all data obtained during exploration. BLM will consider the data confidential and will not make the data public until the earlier of the following occurs:

(a) The areas involved have been leased; or

(b) BLM determines that the data are not exempt from disclosure under the Freedom of Information Act.

Subpart 3507—Preference Right Leases

§ 3507.11 What do I have to do to be entitled to a preference right lease?

You must have a prospecting permit for the area you want to lease and meet the following conditions:

(a) *Phosphate, Gilsonite and hardrock minerals.* You must demonstrate that you have discovered a valuable deposit within the period covered by your prospecting permit.

(b) *Sodium, potassium, and sulphur.* In addition to demonstrating that you have discovered a valuable deposit, BLM must determine that the lands are chiefly valuable for the subject minerals.

(c) *Asphalt.* You can get only a fringe acreage lease or a competitive lease for asphalt, not a prospecting permit.

§ 3507.15 How do I apply for a preference right lease?

No specific form is required. You must submit three copies of your application within 60 days after your prospecting permit expires.

§ 3507.16 What information must my application for a preference right lease include?

Your application must contain:

(a) A statement of your qualifications and holdings as specified in subpart 3503 of this part;

(b) Three maps showing utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas you will use for pits, overburden and tailings, and the location of water sources or other resources which you may use in the proposed operations or incidental facilities;

(c) A narrative statement addressing:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands; and

(d) If your application is for less than the lands covered by your prospecting permit, a complete and accurate description of the lands as described and included in your prospecting permit.

§ 3507.20 Is there a fee or payment required with my application?

Yes. With your application, submit the first year's rent, according to the provisions in 43 CFR 3504.15.

§ 3507.25 Under what circumstances will BLM reject my application?

BLM will reject your application for a preference right lease if:

(a) You did not discover a valuable deposit of mineral(s) covered by the prospecting permit;

(b) You did not submit requested information in a timely manner;

(c) You did not otherwise comply with the requirements of this subpart; or

(d) In the case of sodium, potassium and sulphur, BLM determines that the lands are not chiefly valuable for the mineral commodity specified in the permit.

§ 3507.26 What do I need to submit to demonstrate that I've found a valuable deposit?

To prove you have found a valuable deposit, provide BLM the information listed in 43 CFR 3593.1. You must have collected the data during the life of the prospecting permit. BLM may request supplemental data to determine the extent and character of the deposit, the anticipated mining and processing methods and costs, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance, and the profitability of mineral development.

§ 3507.30 If I disagree with BLM's reasons for rejecting my preference right lease, may I appeal?

Yes. If you believe that the facts in your application are sufficient to show that you are entitled to a lease, you have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals, Department of Interior, under the procedures in 43 CFR parts 4 and 1840. At the hearing, you will have to show, by a preponderance of the evidence, that you discovered a valuable deposit of the mineral.

Subpart 3508—Competitive Leases

§ 3508.11 What lands are available for competitive leasing?

BLM issues a competitive lease on unleased lands where BLM knows that a deposit of a valuable mineral deposit exists. In such areas, BLM will issue you an exploration license, but not a prospecting permit. You must compete with any other interested parties to get the lease.

(a) In general, BLM may offer competitive leases for lands where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable mineral deposit.

(b) Lands in and adjacent to Searles Lake, California, are available for competitive potassium leases without regard to quality or quantity of potassium deposits that may be present.

§ 3508.12 How do I get a competitive lease?

Notify BLM of areas in which you are interested. Additionally, BLM may designate certain lands for competitive leasing. In both cases, upon determining the lands are available for leasing, BLM publishes a notice identifying the lands available, conditions under which bids will be accepted, and the date and time bids will be opened. BLM awards competitive leases only through sale to the qualified bidder who offers the highest acceptable bonus bid.

§ 3508.14 How much time does BLM allow for a bid to be submitted?

Prior to offering a lease, BLM will publish a notice of lease sale for at least three consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. BLM will also post the notice of lease sale for 30 days in the public room of the BLM

office with jurisdiction over the lands being offered. The notice will specify the date by which bids must be submitted.

§ 3508.15 What information will the notice of lease sale include?

The notice will include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the mineral deposit being offered;

(e) The minimum bid BLM will consider; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3508.16 What information will the detailed statement include?

The detailed statement will include:

(a) The proposed lease terms and conditions, including the rental, royalty rates, bond amount, and special stipulations for the particular tract;

(b) An explanation of how you may submit your bid;

(c) Notification that you must accompany your bid with a statement of your qualifications (See subpart 3502 of this part) and a deposit of one-fifth of your bid amount;

(d) Notification that, if you are the successful bidder, you must pay, before BLM issues the lease, your proportionate share of the total cost of the publication of the sale notice. Your share is based on the number of tracts you bid on successfully, divided into the total number of tracts offered for sale;

(e) A warning concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information BLM deems appropriate.

§ 3508.20 How will BLM conduct the sale and handle bids?

BLM will open and announce all bids at the time and date specified in the notice of lease sale, but will not accept or reject bids at that time. BLM will not consider bids received after the time specified in the notice of sale. You may withdraw or modify your bid prior to the time specified in the notice of sale.

§ 3508.21 What happens if I am the successful bidder?

If you are the highest qualified bidder and your bid meets or exceeds fair market value, as determined by BLM through appraisal or other appropriate means, BLM will send you copies of the lease on the form attached to the detailed statement. You must sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs, and furnish the required lease bond, within the time BLM specifies.

§ 3508.22 What happens if my bid is rejected?

(a) If your bid is the high bid and is rejected because you did not sign the lease form and pay the balance of the bonus bid, or otherwise comply with this subpart, you forfeit to the United States your deposit of one-fifth of the bonus bid amount.

(b) If BLM determines that your high bid must be rejected for reasons beyond your control, the deposit submitted with the bid will be returned to you.

Subpart 3509—Fractional and Future Interest Leases

§ 3509.10 What are future interest leases?

BLM issues future interest leases to those holders of mineral interests whose present interest will revert to the Federal government at some future date. Future interest leases allow the present interest holders to continue using their present mineral right once the Federal government acquires it.

§ 3509.11 For what lands will BLM issue future interest leases?

BLM will issue noncompetitive leases for future interests in lands on which there is an existing mining operation or in which the present mineral interest holder has established the existence of a valuable deposit, if BLM determines it is in the public interest.

§ 3509.12 What if I am a mining owner or operator, and I am applying for a future interest lease as part of my existing operation?

You must meet the qualifications set forth in subpart 3502 of this part, and you must pay fair market value for the mineral deposit when title vests in the United States. BLM will not issue you a lease until you meet those requirements.

§ 3509.15 Who may apply for a future interest lease?

Only the person who has a present interest in the minerals may apply for a future interest lease. BLM may issue future interest leases to applicants who own all or substantially all of the present mineral interest (over 50%), regardless of whether that person owns as fee owner, lessee, or holder of operating rights.

§ 3509.16 How do I apply for a future interest lease?

No specific form is required. Include a $25 filing fee with application. Submit the application to the BLM office with jurisdiction over the lands. You must file no less than 1 year before the mineral interests vest with the United States.

§ 3509.17 What information must I include in my application for a future interest lease?

Your application must include a description of the land and the same information BLM requires when you apply for a present interest Federal lease, including your certification that you meet the qualifications requirements (see subpart 3502 of this part). You also need to include evidence of your title and of the extent of your rights to the present interest in the mineral deposits either by submitting a certified abstract of title or a title certificate. You must submit the names of the other owners of the mineral interests. If you are owner of the operating rights to the mineral by means of a contract with the owner, you need to submit three copies of the mineral contract or lease also.

§ 3509.20 When does my future interest lease take effect?

Unlike other permits or leases, your future interest lease will be effective on the date the minerals vest in the United States, as stated in the lease.

§ 3509.25 Under what conditions would BLM reject my application for a future interest lease?

BLM will reject your future interest application if you do not meet the qualifications in § 3509.15, or for any of the following reasons:

(a) You filed your application less than one year before the minerals vest in the United States. If, at the time the minerals vest in the United States, BLM has on file an application for a future interest lease that was filed less than one year earlier, BLM will reject the application. After the mineral right vests in the United States, BLM will accept only applications for present interest leases or permits.

(b) If you as the lessee would have a total interest of less than 50% once the future interest lease becomes effective, BLM may reject the application unless we determine it would be in the best interests of the government to issue the lease.

§ 3509.30 May I withdraw my application for a future interest lease?

Yes. You can withdraw your application as long as you file the

withdrawal before the lease is signed. BLM will retain the application fee.

Subpart 3510—Lease Terms and Conditions

§ 3510.15 How long will my lease be in effect?

Your lease will be issued for the term specified in the table.

Lease term	Phosphate	Sodium	Potassium	Sulphur/hardrock	Gilsonite
(a) Initial lease term (years).	Indeterminate	10	Indeterminate	20	20 years, and as long thereafter as Gilsonite is produced in paying quantities.
(b) Periods of renewal or readjustment.	Readjustment at the end of each 20 year period.	Renewal for 10 year term at end of initial term and each 10 year period.	Readjustment at the end of each 20 year period.	Renewal for 10 year term at end of initial term and each 10 year period.	Readjustment at the end of each 20 year period.

§ 3510.20 Do certain leases allow me to mine other commodities as well?

Yes. Sodium leases may authorize the mining of potassium compounds as related products, and potassium leases may authorize the mining of sodium compounds as related products. A phosphate lease allows you to use deposits of silica, limestone or other rock on the lease in the processing or refining of phosphate, phosphate rock, and associated minerals mined from the leased lands. You must pay royalty for the use of these materials as specified in your lease.

§ 3510.21 If I am mining calcium chloride, can I obtain a noncompetitive mineral lease to produce the commingled sodium chloride?

If you are producing calcium chloride in paying quantities from an existing mine which you control, you may apply to BLM for a fringe acre lease to produce the commingled sodium chloride. You must already have authorization, under 43 CFR part 3800, for the locatable minerals. You must also meet the other requirements of this part for the commingled leaseable minerals.

§ 3510.25 What is meant by lease readjustment and lease renewal?

(a) If your lease is issued subject to readjustment, BLM will notify you of the readjusted terms at the end of each 20-year period. If BLM does not notify you of readjusted terms, those leases continue for another 20-year period under the same terms and conditions.

(b) If you have a lease that requires renewal, BLM will issue the lease for an initial term as specified in the table in § 3510.15. You must apply for a renewal of the lease at least 90 days prior to the end of its initial term in order to extend the lease for an additional term. If you fail to renew these leases, they expire and the lands become available for releasing by BLM.

§ 3510.26 What if I object to the terms and conditions BLM proposes for a readjusted lease?

(a) You will be given 60 days after receiving the proposed readjusted terms to file any objection. If BLM does not receive an objection the proposed readjusted terms will be in effect. If you file an objection, BLM will issue a decision responding to your objection. If you consider the decision to be adverse to your interests, you will have the right of appeal under 43 CFR parts 4 or 1840.

(b) Except as provided in the following section, the readjusted lease terms and conditions will be effective pending the outcome of any appeal provided for in paragraph (a) of this section unless BLM provides otherwise.

§ 3510.27 How will a lease renewal affect my priority as lessee?

BLM bases your priority as a permittee or lessee, as related to other permittees or lessees on the same lands, on the date we issued your initial permit or lease. This applies regardless of the date of any readjustments, extensions, or renewals.

§ 3510.30 If I appeal BLM's proposed new terms, do I have to continue paying royalties or rentals while my appeal is being considered?

You must continue to pay royalties or rentals at the original rate. Your obligation to pay any increased readjusted royalties, minimum royalties and rentals will be suspended while your objection or appeal is considered. However, any increased charges accrue beginning with the effective date of the readjustment, while final action on your appeal is pending. If the increased charges are sustained by a decision on the objection or on appeal, you must pay the accrued balance, plus interest at the rate specified for late payment by the MMS (See 43 CFR part 3590).

§ 3510.50 How do I renew my lease?

To renew leases, you must file an application at least 90 days prior to the expiration of the lease term. No specific form is required. You must file three copies of your application with BLM together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction of an acre.

Subpart 3511—Assignments and Subleases

§ 3511.11 Once I am issued a permit or lease, can I assign or sublease it?

You may assign or sublease your permit or lease in whole or in part to any person, association, or corporation qualified to hold a permit or lease.

§ 3511.12 Is there a fee for requesting an assignment or sublease?

Yes. When you submit your instrument for assignment of record title or operating rights, or for overriding royalty assignment, you must pay a nonrefundable filing fee of $25. BLM will not accept any instrument not accompanied by the filing fee.

§ 3511.13 What do I submit to get BLM approval for an assignment of record title?

Within 90 days of final execution of the assignment, you must submit three copies of your instrument for assignment of each permit or lease. The instrument must contain:

(a) The name and current address of the assignee;

(b) The interest held by you and the interest you plan to assign;

(c) The serial number of the affected permit or lease;

(d) The percentage of overriding royalties retained;

(e) The date and your original signature on each copy, as the assignor; and

(f) The assignee must also send BLM a request for approval of the assignment which must contain:

(1) A statement of the assignee's qualifications and holdings, as required by subpart 3502 of this part;

(2) Date and signature of the assignee; and

(3) A $25 filing fee.

§ 3511.16 How do I assign or transfer a sublease or operating rights to my lease or permit?

You must file one copy of the sublease or agreement to assign operating rights between you and the operator within 90 days from the date of final execution of these agreements. The assignee must also file a signed and dated request for approval accompanied by a statement of qualifications and holdings and a $25 fee. BLM will notify you with a formal decision indicating approval or disapproval.

§ 3511.18 Do I have to notify BLM if I intend to transfer an overriding royalty to another party?

Yes. Although BLM does not approve these transfers, you must file all overriding royalty interest assignments with the BLM within 90 days from the date of execution. Your filing must be accompanied by the assignee's statement of qualifications as provided for in subpart 3503 of this part and the $25 filing fee.

§ 3511.20 Will BLM approve my assignment or sublease if I have outstanding liabilities?

No. Before BLM will approve your assignment of a lease or permit, your account must be in good standing or the assignee and his or her surety must provide written acceptance of your outstanding liabilities under the permit or lease. In addition, the assignee must either furnish a new bond equivalent to your existing bond or obtain consent of the surety on your bond to substitute the assignee as the principal.

§ 3511.25 If I assign my permit or lease, when do my obligations under the permit or lease end?

You and your surety remain responsible for the performance of all obligations under the permit or lease until BLM approves the assignment. Even then, you will continue to be responsible for obligations that accrued prior to BLM's approval of the assignment, whether or not they were identified at the time of the transfer.

§ 3511.30 What are the responsibilities of a sublessor and a sublessee?

After BLM's approval of a sublease becomes effective, the sublessor and sublessee become jointly and severally liable for performance of all obligations under the permit or lease.

§ 3511.33 Does an assignment or sublease alter the permit or lease terms?

No. An assignment or sublease will not extend the life of the permit or the readjustment or renewal periods of the lease, or alter other terms or conditions of the permit or lease.

Subpart 3512—Waiver, Suspension, or Reduction of Rental and Minimum Royalties

§ 3512.11 Can I be relieved of the lease requirements of rental, minimum royalty, or production royalty?

Yes. BLM has a process which may allow you temporary relief from the lease requirements of rental, minimum royalty, or production royalty.

§ 3512.12 What criteria does BLM consider in approving a waiver, suspension, or reduction in rental or minimum royalty, or a reduction in the royalty rate?

BLM may approve an application for a waiver, suspension, or reduction in rental or minimum royalty, or a reduction in the royalty rate, if approval:

(a) Is in the interest of conservation;

(b) Will encourage the greatest ultimate recovery of the resource; and

(c) Is necessary to promote development of the mineral resources or the lease cannot be successfully operated under existing terms.

§ 12.15 How do I apply for relief?

You must file two copies of an application with BLM which contain the following information for all leases in the application:

(a) The serial numbers;

(b) The name of the record title holder(s);

(c) The name of the operator if different from the record title holder(s);

(d) A description of the lands by legal subdivision;

(e) A map showing the serial number and location of each mine or excavation and the extent of the mining operations;

(f) A tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of your application, and the average production mined per day for each month;

(g) If you are applying for relief from the minimum production requirement, complete information as to why you did not attain the minimum production;

(h) A detailed statement of expenses and costs of operating the entire lease, and the income from the sale of any leased products;

(i) All facts showing why you cannot successfully operate the mines under the royalty or rental fixed in the lease and other lease terms;

(j) For reductions in royalty, full information as to whether you pay royalties or payments out of production to anyone other than the United States, the amounts so paid and efforts made to reduce them;

(k) Agreements of the leaseholder(s) and the non-Federal royalty holders to a permanent reduction which ensures that the non-Federal royalty interests do not exceed one-half the proposed reduced royalties paid to the United States; and

(l) Any other information needed by BLM to ascertain whether the request satisfies the standards in § 3512.12.

§ 3512.20 What is a suspension of operations and production?

A suspension of operations and production is an action by which BLM orders or allows you to cease operations in the interest of conservation.

§ 3512.21 What is the effect of a suspension of operations and production?

BLM will extend the term of your lease by any periods of suspension of operations and production. BLM will reduce the minimum annual production requirements of your lease proportionately for that portion of a lease year in which a suspension of operations and production is effective. You do not have to pay rental and minimum annual production royalties beginning the first day of the lease month if the suspension becomes effective that day or beginning the first day of the following lease month if the suspension becomes effective on any day other than the first day of the lease month.

§ 3512.22 How do I apply for a suspension of operations and production?

You must submit two copies of an application to BLM that explains why it is in the interest of conservation to suspend your operations and production.

§ 3512.25 When will my suspension of operations and production take effect?

Your suspension takes effect on the date specified by BLM.

§ 3512.26 When and how does my suspension of operations and production expire or terminate?

Your suspension will end on the first day of the lease month in which you

resume operations or production, or upon expiration of the suspension, whichever occurs first. All lease terms and obligations resume on this date. If you have paid rentals in advance, BLM will allow credit on the next rental or royalty due under the lease.

§ 3512.30 What is a suspension of operations?

A suspension of operations is an action by which BLM may, upon your application, suspend operations on your lease when marketing conditions are such that your leases cannot be operated except at a loss.

§ 3512.31 What is the effect of a suspension of operations?

A suspension of operations does not affect the term of the lease or the annual rental payment. BLM will reduce the minimum annual production requirements of your lease proportionate to that portion of the lease year for which a suspension of operations is effective. You do not have to pay minimum annual production beginning the first day of the lease month if the suspension becomes effective that day or beginning the first day of the following lease month if the suspension becomes effective on any day other than the first day of the lease month.

§ 3512.32 How do I apply for a suspension of operations?

You must submit an application in duplicate to BLM which contains sufficient information to establish that your lease cannot be operated except at a loss.

§ 3512.33 When will my suspension of operations take effect?

Your suspension will be effective on the date specified by the BLM.

§ 3512.34 When and how does my suspension of operations expire or terminate?

The suspension of minimum annual production ends on the first day of the lease month in which you resume operations, or upon expiration of the suspension, whichever occurs first. Your obligation for minimum annual production resumes at this time.

Subpart 3513—Lease Relinquishments, Terminations, and Cancellations

§ 3513.11 Can I relinquish my lease or any part of my lease?

If you can show that the public interest will not be impaired, you may relinquish your entire lease or any legal subdivision included in your lease upon BLM's approval. Notify BLM in writing that you intend to relinquish all or part of your lease. Include your signature and date. If you relinquish your lease, you will be subject to a continued obligation to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of your lease.

§ 3513.12 What should I include in a request for partial relinquishment?

Any partial relinquishment must clearly describe the lands you are relinquishing and give the exact area involved.

§ 3513.15 Where do I file my relinquishment?

File the relinquishment in the BLM office that issued the lease.

§ 3513.20 When is my relinquishment effective?

When BLM accepts your relinquishment, it will be effective as of the date you filed it.

§ 3513.25 When does my lease expire?

(a) Sodium, sulphur, asphalt, and hardrock mineral leases expire at the end of the lease term, unless you file a timely application for lease renewal, or at the time your application for renewal is rejected.

(b) Potassium, phosphate and gilsonite leases continue for so long as you comply with the lease terms and conditions which are subject to periodic readjustment.

§ 3513.30 Can my lease be canceled?

Yes. BLM may institute appropriate proceedings in a court of competent jurisdiction to forfeit and cancel your lease if:

(a) You fail to comply with the provisions of the Act, or of regulations in effect when your lease is issued or readjusted; or

(b) You default in the performance or observance of any of the terms, covenants, and stipulations of the lease and continue to fail or default for 30 days after BLM notifies you in writing of your default.

§ 3513.31 Can BLM waive cancellation or forfeiture?

Yes, but BLM's waiver of any particular cause of forfeiture will not prevent BLM from canceling and forfeiting the lease for any other cause or for the same cause occurring at any other time.

§ 3513.32 Will BLM give me an opportunity to remedy a violation of the lease terms?

Yes. If you own or control, directly or indirectly, any interest in any lease in violation of any of the provisions of the Act, BLM will give you 30 days to remedy the violation or to show cause why the Attorney General should not be requested to institute proceedings in a court of competent jurisdiction to:

(a) Cancel the lease;

(b) Forfeit the interest so owned;

(c) Compel disposal of the interest so owned or controlled; or

(d) If a lease is issued improperly, and requires amending, it will be subject to administrative cancellation and BLM will issue an amended lease.

§ 3513.50 What happens to a bona fide purchaser if the lease assigned to him or her is subject to cancellation?

(a) If you are a qualified *bona fide* purchaser, BLM will not cancel your lease or your interest in a lease even if we had decided to cancel your predecessor's lease. However, as purchaser, you are responsible for ensuring that the lease is in compliance with the terms and conditions required by BLM.

(b) BLM will promptly take action to dismiss any party who shows it is a *bona fide* purchaser from any legal proceedings to cancel the lease.

Subpart 3514—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3514.11 If I already have a Federal lease, or the mineral rights on adjacent private lands, may I lease adjoining Federal land that contains the same deposits without competitive bidding?

Yes. If the adjoining Federal lands are available for leasing, you can lease them noncompetitively, even if they are known to contain a deposit of the mineral you are leasing. BLM will either issue a new lease for these lands (fringe acreage) or add the lands to your existing Federal lease (modification).

§ 3514.12 What do I need to do to obtain a lease modification or fringe acreage lease?

(a) You must file three copies of your application with the BLM office with jurisdiction over the lands. No specific application form is required.

(b) Your application must be accompanied by a nonrefundable filing fee of $25, and an advance rental payment in accordance with the rental rate for the mineral commodity you are seeking. If you are seeking to modify an existing lease, BLM will base the rental payment on the rate in effect for the lease being modified.

(c) Your application must:

(1) Reference the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Show that the mineral deposit specified in your application extends from your adjoining lease or from private lands owned or controlled by you; and

(4) Include proof that you own or control the mineral deposit in the adjoining lands if they are not under a Federal lease.

§ 3514.15 What does BLM do with my application?

BLM can issue or modify a lease under this subpart only if we determine that:

(a) The lands are contiguous to your existing Federal lease or to non-federal lands owned or controlled by you;

(b) The new lease is not in excess of maximum size allowed in a lease, as specified in § 3503.37;

(c) The acreage of the modified lease, including additional lands, is not in excess of the maximum size allowed for a lease, as specified in § 3503.37;

(d) The mineral deposit is not in an area of competitive interest;

(e) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(f) Leasing the lands will conserve natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3514.20 Are there any fees required to modify my existing lease or obtain a fringe acreage lease?

Before BLM issues a new fringe acreage lease or modifies your existing lease, you must pay a bonus bid in an amount determined by BLM based on an appraisal or other appropriate means, but not less than $1 per acre or fraction of an acre.

§ 3514.21 What terms and conditions apply to fringe acreage leases and lease modifications?

Your fringe acreage lease is a new lease. Therefore, BLM may impose terms and conditions different from those in your original non-Federal lease, if any. BLM will issue a modified lease subject to the same terms and conditions as in the original lease.

Subpart 3515—Mineral Lease Exchange

§ 3515.10 May I exchange my lease or lease right for another mineral lease or lease right?

Yes. If BLM concludes that operations on your preference right or outstanding lease are not in the public interest, or that operations on the lands to be leased in exchange would be in the public interest, you may relinquish your current lease or preference right in exchange for a mineral lease of other lands of equal value for any leasable or hardrock mineral covered by this part.

§ 3515.12 What regulatory provisions apply if I want to exchange a lease or lease right?

(a) Except as provided in paragraph (b) of this section, this subpart and the relevant provisions of 43 CFR part 2200 apply to exchanges.

(b) Exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications are subject to the regulations in 43 CFR part 3400, subpart 3435 rather than to the regulations in this part.

§ 3515.15 Under what circumstances will BLM consider initiating an exchange?

(a) BLM will notify you that we are prepared to consider exchange of a mineral lease if you relinquish your existing leasing rights.

(b) BLM may seek to exchange any part or all of the lands under your preference right lease application(s) or lease(s).

(c) BLM must find that the exchange is in the public interest under both of the following criteria:

(1) The benefits of production from your existing lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic, or other public interest values such as recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports, and rights-of-way from lease operations; and

(2) The lands proposed for exchange are free from hazardous waste as defined under the authorities of the Clean Water Act (33 U.S.C. 1251), Resource Conservation and Recovery Act (42 U.S.C. 6901) and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601).

§ 3515.18 Will I be notified that BLM is considering an exchange?

Yes. The notice you receive will:

(a) State why BLM believes an exchange would be in the public interest;

(b) Ask whether you are willing to negotiate for an exchange;

(c) Contain a description of the lands for which BLM would offer exchange terms; and

(d) Allow you to describe the lands on which you would accept an exchange lease.

§ 3515.20 Can preference right lease rights be exchanged?

Yes. In order to have a right that can be exchanged you must have timely submitted a preference right lease application. If you have demonstrated a right to a lease, BLM may, in lieu of issuing the preference right lease, negotiate for the selection of appropriate land to exchange and establish lease terms for those lands.

§ 3515.21 What types of lands can be exchanged?

The lands to be leased in exchange for your existing rights must be:

(a) Subject to leasing under the authorities of this part; and

(b) Acceptable to both you and BLM as a lease tract containing a deposit of leasable or hardrock minerals of equal value to your existing rights.

§ 3515.22 What if the lands to be exchanged are not of equal value?

If the lands are not equal in value the grantor or the Secretary, as circumstances require, may equalize the value by making a monetary payment to the party receiving the property of lesser value. Such payments cannot exceed 25 percent of the total value of the land or interest transferred out of Federal ownership. The parties may mutually agree to waive the monetary payment, if the Secretary determines that:

(a) A waiver will expedite the exchange;

(b) The public interest will be better served by the waiver than by the payment; and

(c) The amount to be waived is no more than 3 percent of the value of the lands being transferred out of Federal ownership, or $15,000, whichever is less.

§ 3515.23 Might I be required to submit additional information?

You must be willing to provide geologic and economic data to enable BLM to determine the fair market value of your preference right or lease to be relinquished.

§ 3515.25 If I agree on the lands to be leased in exchange, what happens next?

After you and BLM agree on the lands to be leased in exchange, BLM will publish a notice of the proposed exchange in the Federal Register and in a newspaper(s) in the county(s) where both the preference right or lease lands and the proposed exchange lease lands are located. The notice will include:

(a) The time and place of a public hearing(s);

(b) BLM's preliminary findings that the exchange is in the public interest; and

(c) A request for public comments on the merits of the proposed exchange.

§ 3515.26 When will BLM make a decision on the exchange?

After the public hearing BLM will prepare a written decision that issuance of the exchange lease is in the public interest. BLM will then process the exchange lease.

§ 3515.27 Will BLM attach any special provisions to the exchange lease?

The terms will contain:

(a) A statement that you quitclaim and relinquish any right or interest in your preference right lease application or lease exchanged; and

(b) A statement setting forth BLM's finding that the lease issuance is in the public interest.

Subpart 3516—Use Permits

§ 3516.10 What are use permits?

Use permits allow you to use the surface of lands not included within your lease for purposes associated with the proper development of your mineral deposits. Use permits are not prospecting permits.

§ 3516.11 What commodities allow use permits?

Use permits are issued only in support of phosphate and sodium leases. For phosphate leases, BLM may issue you a permit to use up to 80 acres on unappropriated and unentered lands. For sodium leases BLM may issue you a permit to use up to 40 acres.

§ 3516.12 What activities can I conduct under a use permit?

Phosphate use permits authorize you to conduct activities to properly extract, treat, or remove the mineral deposits. Sodium use permits authorize you to occupy camp sites, develop refining works and to use the surface for other purposes connected with and necessary to the proper development and use of the deposits. BLM cannot grant use permits on National Forest System lands.

§ 3516.15 How do I apply for use permits?

You must file three copies of your application in the BLM office administering the lands you are interested in. There is no specific form required. Include a nonrefundable $25 filing fee and the first year's rental. Calculate the rental in accordance with § 3504.15.

§ 3516.16 What must I include with my application?

Provide specific reasons why you need the additional lands, describe the lands applied for, provide any information demonstrating that the lands are suitable and appropriate for your needs, and provide evidence that the lands are unoccupied and unappropriated. Your application must also contain an agreement to pay the annual charge identified in the permit.

§ 3516.20 Is there an annual fee or charge for use of the lands?

Yes. You must pay the annual $1 per acre rental, or $20, whichever is greater, on or before the anniversary date of the permit.

§ 3516.30 What happens if I fail to pay the annual rental on my use permit?

Your use permit will terminate automatically if you fail to pay the required rental within 30 days after BLM serves you a written notice of the rental requirement.

Subpart 3517—Special Provisions Applying to Hardrock Minerals

§ 3517.10 What are development contracts and processing and milling arrangements?

Development contracts and processing and milling arrangements involving hardrock minerals are agreements between one or more hardrock mineral lessees and one or more other entities to justify large scale operations for the discovery, development, production, or transportation of ores.

§ 3517.11 Are leases and permits covered by approved agreements exempt from the acreage limitations?

Yes. Hardrock mineral leases and permits committed to development contracts or processing or milling arrangements approved by BLM are exempt from acreage limitations.

§ 3517.15 How do I apply for one of these agreements?

No specific form is required. Submit three copies of your application to the BLM office with jurisdiction over some or all of the lands in which you are interested. Include the following information:

(a) Copies of the contract or other agreement affecting the Federal hardrock mineral leases or permits, or both;

(b) A statement showing the nature and reason for your request;

(c) A statement showing all the interests held in the area of the agreement by the designated contractor; and

(d) The proposed or agreed upon plan of operation for development of the leased lands.

§ 3517.16 How does BLM process my application?

(a) BLM considers whether the agreement will conserve natural resources and is in the public interest.

(b) Once the agreement is signed by all the parties, BLM will approve it.

§ 3517.50 Can I collect mineral specimens for non-commercial purposes?

You may collect mineral specimens for hobby, recreation, scientific, research or similar purposes. You do not need a prospecting permit from BLM for these activities. However, the surface management agency, including BLM, may require a use permit. That agency will issue the permit, subject to any fees, terms and conditions that the agency may impose.

[FR Doc. 96–26398 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–94–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–205; RM–8862]

Radio Broadcasting Services; Jupiter and Hobe Sound, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jupiter Radio Partners requesting the substitution of Channel 288C2 for Channel 288C3 at Jupiter, Florida, reallotment of Channel 288C2 to Hobe Sound, Florida, and modification of the construction permit for Station WTPX to specify operation on Channel 288C2 at Hobe Sound, Florida. The coordinates for Channel 288C2 are 27–16–03 and 80–12–10. We shall propose to modify the license for Station WTPX in accordance with Section 1.420(i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availaility of an

additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 25, 1996, and reply comments on or before December 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No.96–205, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–26829 Filed 10–17–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–203; RM–8871]

Radio Broadcasting Services; Augusta, Gibson and Thomson, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wilks Broadcast Acquisitions, Inc., seeking the substitution of Channel 269C3 for Channel 272A at Augusta, Georgia, and the modification of Station WEKL's license to specify the higher class channel. To accommodate the allotment at Augusta, the Commission also proposes to substitute Channel 232A for Channel 269A at Thomson, Georgia, modify the license of Station WTHO to specify the alternate Class A channel, and delete vacant and unapplied-for Channel 232A at Gibson, Georgia. Channel 269C3 can be allotted to Augusta in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) west of the community, at coordinates 33–28–20 NL; 82–05–18 WL. Channel 232A can be allotted to Thomson with a site restriction of 3.9 kilometers (2.4 miles) west of the community, at coordinates 33–27–26; 82–32–31. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 269C3 at Augusta or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. Parties expressing an intention to apply for Channel 232A at Gibson must do so in initial comments herein.

DATES: Comments must be filed on or before November 25, 1996, and reply comments on or before December 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Crigler, Esq., Haley Bader & Potts, P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–203, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–26828 Filed 10–17–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 91–09; RM–7423]

Radio Broadcasting Services; Greenfield and Del Rey Oaks, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the petition for rule making filed by Troposphere Broadcasting Limited Partnership, permittee of Station KSEA(FM), Greenfield, California, requesting the substitution of Channel 300A for 300B at Greenfield, the reallotment of Channel 300A to Del Rey Oaks, California, and the modification of Station KSEA(FM)'s construction permit to specify Del Rey Oaks as the community of license. See 56 FR 05191.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* adopted September 13, 1996 and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–26827 Filed 10–17–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 100496A]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Committee and Advisors will hold a public meeting. The purpose of this meeting is to discuss the *Loligo* squid mesh regulation.

DATES: The meeting is scheduled for Thursday, October 24, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA 19153, telephone 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: Minimum mesh size provisions for *Loligo* squid were implemented under Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (61 FR 14465, April 2, 1996). Discussion at this meeting will focus on the implications of the minimum mesh provisions for the *Loligo* fishery, including enforcement and implementation concerns.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting date.

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

Dated: October 11, 1996.

Bruce Morehead,

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

[FR Doc. 96–26709 Filed 10–17–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 203
Friday, October 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.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Private Sector Development Organizations and Foreign Assistance Programs

AGENCY: United States Agency for International Development.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Agency for International Development (USAID) invites comments regarding the expanded use of private sector development organizations in the implementation of foreign assistance programs in countries where USAID no longer has resident staff.

DATES: Interested persons are invited to submit comments on or before December 1, 1996.

ADDRESSES: Written comments and/or requests for copies of the relevant papers on this subject should be addressed to M/OP, Gary V. Kinney, SA–14, Room 1504, U.S. Agency for International Development, Washington, D.C. 20523–1422; Tel: (703) 875–1204; Fax: (703) 875–1519; or Internet: gkinney@usaid.gov. These papers also can be obtained directly from the USAID Website at www.info.usaid.gov under the heading ''Franchising'' Documents. To access this submenu, select (from the top down) the following: ''Business and Procurement'', ''USAID Procurements'', ''Procurement Reform'', ''Franchising Documents''. Documents can then be downloaded.

FOR FURTHER INFORMATION CONTACT: M/OP, Gary V. Kinney, SA–14, Room 1504, U.S. Agency for International Development, Washington, D.C. 20523–1422; Tel: (703) 875–1204; Fax: (703) 875–1519; or Internet: gkinney@usaid.gov.

SUPPLEMENTARY INFORMATION: The Agency has prepared draft papers, entitled ''Implementation of USAID Programs in Non-Presence Countries by Non-Governmental Organizations'' and ''Public-Private Partnership in Support of International Development Information-Service Centers''. Non-presence countries are those countries where USAID does not have a direct-hire resident staff. Non-Government Organizations are private sector entities including for-profit firms, universities, private voluntary organizations, and other nonprofit organizations. Comments submitted in response to this request will be considered prior to approval of the paper.

Dated: September 10, 1996.

Gary V. Kinney,

USAID Procurement Ombudsman.

[FR Doc. 96–26796 Filed 10–17–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 11, 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, DC 20503 and to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

* National Agricultural Statistics Service

Title: Vegetables.

Summary: Information is collected for acreage planted, harvested, production, and utilization of vegetables for fresh market and processing.

Need and Use of the Information: The information provides vital statistics for growers, processors, and marketers to use in making production and marketing decisions. It is also used in studying agricultural chemical use and in developing and appraising government programs affecting the vegetables industry.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 13,906.

Frequency of Responses: Reporting: On occasion; Weekly; Other, seasonally.

Total Burden Hours: 2,710.

* National Agricultural Statistics Service

Title: Floriculture Survey.

Summary: Information is collected on plant production, sales, and value and area used for production of principal floriculture and nursery commodities.

Need and Use of the Information: The information is used to assess current production levels, potential growth, and the resource needs of the industry. It is also used to address questions on imports.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 13,150.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,125.

* Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

Summary: Information is collected from producers, handlers and processors including production, disposition, qualification data, and assessment information.

Need and Use of the Information: The information is used to strengthen market place position and to maintain, develop, and expand markets for various commodities.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms.

Number of Respondents: 827.

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

Total Burden Hours: 410,948.

* Forest Service

Title: Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

Summary: This is a multipurpose survey designed to serve management, policy, research and program needs. System land visitors are asked to respond to questions concerning

accessibility for persons with disabilities, road maintenance, clean water for drinking, etc.

Need and Use of the Information: The data collected is evaluated to ensure that government-wide public goals and management objectives are met.

Description of Respondents: Individuals or households.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,500.

* Commodity Credit Corporation

Title: CCC Conservation Contract.

Summary: Information collected allows a respondent to apply for conservation benefits, submit performance data for payment, and record conservation decisions.

Need and Use of the Information: The information is used to carry out the conservation program including designation of priority areas for funding.

Description of Respondents: Farms; Individuals; States, Local or Tribal Government.

Number of Respondents: 31,000.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 683,450.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–26736 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Sonic Industries, Inc. of Hatboro, Pennsylvania, an exclusive license to U.S. Patent 5,307,679 issued May 3, 1994, ''Method and Apparatus for Evaluating the Drying Properties of Undried Wood''. Notice of Availability was published in the Federal Register on September 16, 1992.

DATES: Comments must be received by no later than December 17, 1996.

ADDRESSES: Send comments to: Janet I. Stockhausen, USDA Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin, 53705–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: 608–231–9502.

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

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–26805 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 96–081–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that three environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
96–129–02	Texas Tech University	8–23–96	Onion plants genetitically engineered to express two types of chitinase genes that may confer resistance to two fungal pathogens.	Texas.
96–071–06	University of Florida	8–26–96	Mutants of a bacterium, *Xanthomonas campestris* pv. *vesi-catoria,* genetically engineered to be non-pathogenic.	Florida.
96–215–01	Pioneer Hi-Bred International, Inc	9–17–96	Canola plants genetically engineered to express proteins of pharmaceutical or industrial interest..	California

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 11th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–26804 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 96–085–1]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify producers of veterinary biological products and other interested persons that we are holding a public meeting to discuss post-marketing surveillance related to the distribution and use of veterinary biological products.

PLACE, DATE, AND TIME OF MEETING: The public meeting will be held in room 1226, College of Veterinary Medicine, Iowa State University, Ames, IA, on Thursday, November 7, 1996, beginning at 1:30 p.m. The meeting is scheduled to end at 5:00 p.m., but may end sooner.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Wessman, Center for Veterinary Biologics, Animal and Plant Health Inspection Service, 223 South Walnut Avenue, Ames, IA 50010; (515) 232–5785; fax (515) 232–7120; or e-mail: vbfo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is sponsoring a meeting, in partnership with the Institute for International Cooperation in Animal Biologics (IICAB), to informally discuss a draft proposal for postmarketing surveillance of veterinary biologics. The draft proposal to be discussed contains provisions for the reporting of all consumer contacts to APHIS by manufacturers. The meeting provides an opportunity for the exchange of information between APHIS representatives, producers of veterinary biological products, and other interested persons.

The IICAB is a partnership organization sponsored by APHIS, the Agricultural Research Service, and Iowa State University to foster cooperation among biologics groups in government and industry, particularly in the area of international harmonization.

Persons interested in the public meeting are requested to contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 11th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–26802 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Prince John Project, Boise National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Availability of a Draft Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service announces the availability of a Draft Environmental Impact Statement (DEIS) for the Prince John Project, Boise National Forest, Cascade Ranger District. The responsible official for the DEIS is Forest Supervisor David D. Rittenhouse. The DEIS describes and displays an analysis of four alternatives to manage National Forest System land within the 12,858-acre project area.

COMMENTS: Reviewers of the DEIS should provide their comments during the review period which will last for 45 days after this notice of availability. Written comments should be addressed to Steve Patterson, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611; or telephone 208–382–7430.

Responding within this timeframe will enable forest personnel to analyze and respond to your comments in the Final Environmental Impact Statement (FEIS) and avoid undue delay in the decisionmaking process. Reviewers have an obligation to structure their participation in the review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1002 (9th Cir., 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Comments on the DEIS should be as specific as possible. It is also helpful if reviewers refer their comments to specific pages and/or chapters in the DEIS.

AVAILABILITY: Copies of the DEIS or copies of a summary are available upon request from the Cascade Ranger District Office, P.O. Box 696, Cascade, Idaho, 83611; or by calling 208–382–7430.

SUPPLEMENTARY INFORMATION: An environmental assessment (EA) for this project was released for a 30-day public review and comment period in April 1996 under the auspices of Public Law 104–19. Since that time, and prior to the release of the Decision Notice, clarification on implementation of Public Law 104–19 has made it necessary to prepare an Environmental Impact Statement for the project (Secretary of Agriculture Glickman, July 2, 1996).

Five primary objectives have been identified for the project: (1) Salvage the dead and imminently dead trees from the area; (2) achieve the desired future condition of a healthy diverse forest in which important resource values, including healthy timber stands, are sustained; (3) improve big-game forage habitat, thin overcrowded stands of

plantations, and reduce natural fuel loads through the use of prescribed fire; (4) reduce current sediment delivery from existing roads by obliterating sections of these roads located immediately adjacent to perennial streams; and (5) provide sawlogs and other wood products to help sustain local sawmills and economies.

CONTACT: Further information can be obtained by contacting Project Leader Steve Patterson, Cascade Ranger District, P.O. Box 696, Cascade, Idaho, 83611; telephone 208–382–7430.

RESPONSIBLE OFFICIAL: David D. Rittenhouse, Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, ID 83702.

Dated: September 10, 1996.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 96–26627 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–11–M

Master Development Plan for Pelican Butte Ski Area, Winema National Forest, Klamath County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) for a Master Development Plan for the Pelican Butte Ski Area on the Klamath Ranger District of the Winema National Forest. In response to a planning permit and prospectus issued by the Forest Service, the Pelican Butte Corporation has submitted a site-specific Master Development Plan for development of a winter recreation area, with limited summer uses. The Forest Service is initiating the process of preparing an EIS to analyze and disclose the effects of the proposed Master Development Plan (Proposed Action) and alternatives. The U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service are being asked to participate as cooperating agencies.

DATES: Comments concerning the scope of the analysis should be received in writing by December 3, 1996.

ADDRESSES: Submit written comments to Bob Castaneda, Forest Supervisor, Winema National Forest, 2819 Dahlia Street, Klamath Falls, Oregon 97601.

FOR FURTHER INFORMATION CONTACT: Don Hoffheins, Klamath Ranger District, Winema National Forest, 1936 California Avenue, Klamath Falls, Oregon 97601, phone 541–883–8858.

SUPPLEMENTARY INFORMATION: Over the past thirty years, a number of studies have identified Pelican Butte as a potential alpine skiing area. In 1990, the City of Klamath Falls submitted a proposal to the Winema National Forest to develop a year-round recreational facility at Pelican Butte as part of the proposed Salt Caves hydroelectric project. Action on the City's proposal ceased in July 1991 in the face of uncertainties regarding management direction for the northern spotted owl habitat and controversy regarding the project's effect on bald eagles. In March 1992, a community ''futuring'' process, *Klamath 2002*, again identified Pelican Butte as a ''major recreation resource for alpine skiing''.

A planning permit was issued to the Pelican Butte Corporation by the Winema National Forest in September 1994 to prepare a conceptual master plan for Pelican Butte. In 1995, the Forest issued a ''Prospectus and Requirements for Submitting an Application for a Ski Area Planning Permit for Developing a Winter Sports Facility on Pelican Butte''. In response to the prospectus, the Pelican Butte Corporation has submitted a 10-year master plan to develop a ski area at Pelican Butte.

The Master Development Plan (proposed action) includes the following elements: design capacity of 4,450 skiers, with a peak capacity of 5,560; gondola, four aerial chairlifts, and one T-bar surface lift; 612 acres of ski terrain; snow-making on 92 acres; 15 kilometers of nordic ski trails; two day lodges; maintenance and ski patrol buildings; and other winter activities such as snow-shoeing. Facilities being planned are within a development area totalling approximately 3,000 acres. Summer uses would include gondola rides, day lodge operations, hiking and interpretive trails. A complete description of the Proposal is available at the Winema National Forest Supervisor's Office, Klamath Ranger District, and at the Klamath Falls public library.

This project-level EIS will tier to the 1990 Winema National Forest Land and Resource Management Plan, as amended by the 1994 Record of Decision for ''Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl'' (Forest Plan). The Forest Plan provides guidance for management activities within the potentially affected area through it's goals, objectives, management area direction, and standards and guidelines. The project would primarily occur within the Pelican Butte Semi-Primitive Recreation Area, and to a lesser extent in areas managed with emphasis on late successional species and bald eagle habitat. The Semi-Primitive Recreation Area allocation specifically provides for the option to develop a downhill ski area, with the type and scope of development to be determined in a site-specific EIS.

Permits and licenses required to implement the proposed Master Development Plan will, or may, include the following: Special Use Permit from the Forest Service; Section 404 Permit from the U.S. Army Corps of Engineers; certification from the Oregon Department of Environmental Quality for Section 401 compliance and permit for Pollution Discharge Elimination System; approval from the Oregon Department of Transportation for any access improvements; clearance from the State Historic Preservation Office; and various review and permit approvals from Klamath County.

Public participation will be important at several points during the EIS preparation. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information and comments from Federal, State, and local agencies, The Klamath Tribes, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by a previous environmental analysis;
4. Exploring additional alternatives; and
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Public scoping meetings will be held in Klamath Falls on October 28, in Medford/Ashland on November 4, and in Rocky Point, Oregon, on November 6, 1996. Meetings will be advertised through a project newsletter and the media.

A range of alternatives for the master plan will be considered including the No Action alternative. As issues are identified other potential alternatives will be developed.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 1997. The comment period on the draft EIS will be 45 days from the date EPA's Notice of Availability appears in the Federal Register.

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, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 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 45-day 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 statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewer may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

After the 45 day comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by August 1998. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official, Forest Supervisor Bob Castaneda, will consider the comments, responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to review under 36 CFR Part 215.

Dated: October 10, 1996.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 96–26753 Filed 10–17–96; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations on Records Release

AGENCY: Assassination Records Review Board.

ACTION: Notice of formal determinations, releases, corrections and reconsideration.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on September 27, 1996, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (Supp. V 1994) (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On September 27, 1996, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of releases of previously redacted information immediately follows the record identification number, followed in turn by the number of postponements sustained, and, where appropriate, the date the document is scheduled to be released or re-reviewed.

FBI Documents: Open in Full

124–10037–10427; 7; 0; n/a
124–10049–10187; 2; 0; n/a
124–10053–10355; 37; 0; n/a
124–10060–10063; 7; 0; n/a
124–10062–10392; 7; 0; n/a
124–10079–10309; 4; 0; n/a
124–10079–10460; 3; 0; n/a
124–10080–10124; 1; 0; n/a
124–10083–10129; 11; 0; n/a
124–10089–10057; 1; 0; n/a
124–10089–10081; 2; 0; n/a
124–10089–10141; 1; 0; n/a
124–10094–10092; 2; 0; n/a
124–10099–10323; 11; 0; n/a
124–10110–10017; 5; 0; n/a
124–10115–10150; 1; 0; n/a
124–10119–10141; 2; 0; n/a
124–10119–10166; 11; 0; n/a
124–10130–10061; 2; 0; n/a
124–10130–10261; 2; 0; n/a
124–10137–10071; 2; 0; n/a
124–10137–10078; 2; 0; n/a
124–10140–10056; 2; 0; n/a
124–10147–10069; 1; 0; n/a
124–10172–10417; 7; 0; n/a
124–10094–10088; 3; 0; n/a
124–10130–10275; 3; 0; n/a
124–10131–10102; 3; 0; n/a
124–10137–10064; 3; 0; n/a
124–10137–10095; 3; 0; n/a
124–10140–10052; 3; 0; n/a
124–10142–10021; 3; 0; n/a
124–10142–10324; 2; 0; n/a
124–10172–10059; 9; 0; n/a
124–10172–10195; 9; 0; n/a
124–10187–10084; 6; 0; n/a
124–10231–10302; 2; 0; n/a
124–10231–10331; 13; 0; n/a
124–10234–10057; 1; 0; n/a
124–10244–10166; 5; 0; n/a
124–10246–10411; 3; 0; n/a
124–10246–10488; 3; 0; n/a
124–10246–10489; 5; 0; n/a
124–10249–10060; 6; 0; n/a
124–10254–10267; 8; 0; n/a
124–10254–10269; 9; 0; n/a
124–10254–10319; 1; 0; n/a
124–10254–10323; 1; 0; n/a
124–10254–10324; 2; 0; n/a
124–10254–10325; 3; 0; n/a
124–10254–10326; 3; 0; n/a
124–10254–10334; 2; 0; n/a
124–10254–10347; 3; 0; n/a
124–10254–10349; 3; 0; n/a
124–10254–10353; 3; 0; n/a
124–10254–10355; 3; 0; n/a
124–10254–10362; 4; 0; n/a
124–10254–10381; 3; 0; n/a
124–10256–10024; 18; 0; n/a
124–10256–10355; 2; 0; n/a
124–10256–10360; 4; 0; n/a
124–10256–10370; 4; 0; n/a
124–10256–10374; 3; 0; n/a
124–10256–10375; 10; 0; n/a
124–10256–10482; 9; 0; n/a
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124–10269–10311; 7; 0; n/a
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Notice of Additional Releases

After consultation with appropriate Federal Agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

124–10027–10218; 124–10031–10467; 124–10031–10468; 124–10035–10101; 124–10035–10103; 124–10035–10105; 124–10035–10106; 124–10049–10002; 124–10058–10438; 124–10063–10462; 124–10063–10480; 124–10065–10075; 124–10070–10489; 124–10075–10013; 124–10079–10237; 124–10079–10282; 124–10079–10311; 124–10079–10347; 124–10079–10348; 124–10079–10350; 124–10079–10354; 124–10079–10355; 124–10079–10356; 124–10079–10369; 124–10079–10383; 124–10080–10133; 124–10082–10147; 124–10084–10017; 124–10084–10044; 124–10087–10318; 124–10094–10049; 124–10094–10050; 124–10095–10174; 124–10097–10052; 124–10100–10073; 124–10104–10195; 124–10105–10250; 124–10108–10387; 124–10110–10038; 124–10113–10009; 124–10121–10024; 124–10123–10045; 124–10123–10112; 124–10126–10409; 124–10126–10437; 124–10129–10009; 124–10129–10116; 124–10129–10148; 124–10129–10167; 124–10129–10168; 124–10129–10174; 124–10129–10194; 124–10129–10299; 124–10129–10344; 124–10130–10057; 124–10130–10117; 124–10130–10161; 124–10130–10186; 124–10130–10246; 124–10130–10260; 124–10130–10267; 124–10130–10284; 124–10130–10286; 124–10130–10329; 124–10130–10331; 124–10130–10356; 124–10131–10051; 124–10131–10068; 124–10131–10083; 124–10131–10085; 124–10131–10122; 124–10131–10123; 124–10131–10124; 124–10131–10125; 124–10131–10127; 124–10131–10128; 124–

10132–10002; 124–10132–10008; 124–10137–10042; 124–10137–10047; 124–10137–10053; 124–10137–10111; 124–10140–10003; 124–10140–10042; 124–10140–10069; 124–10140–10075; 124–10140–10118; 124–10142–10049; 124–10142–10226; 124–10142–10258; 124–10142–10286; 124–10142–10291; 124–10144–10245; 124–10144–10247; 124–10144–10248; 124–10144–10253; 124–10144–10255; 124–10144–10259; 124–10144–10261; 124–10144–10262; 124–10144–10265; 124–10144–10272; 124–10144–10274; 124–10144–10276; 124–10144–10277; 124–10144–10279; 124–10144–10284; 124–10144–10285; 124–10144–10288; 124–10144–10294; 124–10144–10297; 124–10144–10302; 124–10144–10303; 124–10144–10304; 124–10144–10308; 124–10144–10309; 124–10144–10312; 124–10144–10313; 124–10144–10315; 124–10144–10316; 124–10144–10317; 124–10144–10319; 124–10144–10321; 124–10144–10324; 124–10144–10327; 124–10144–10329; 124–10144–10330; 124–10144–10331; 124–10144–10334; 124–10144–10468; 124–10144–10471; 124–10145–10297; 124–10147–10046; 124–10147–10049; 124–10147–10056; 124–10147–10067; 124–10147–10076; 124–10147–10143; 124–10147–10150; 124–10149–10042; 124–10152–10014; 124–10152–10016; 124–10155–10218; 124–10156–10135; 124–10158–10004; 124–10158–10334; 124–10160–10017; 124–10160–10064; 124–10160–10072; 124–10160–10267; 124–10163–10272; 124–10163–10273; 124–10163–10275; 124–10163–10276; 124–10163–10277; 124–10163–10289; 124–10163–10298; 124–10163–10301; 124–10163–10306; 124–10163–10308; 124–10163–10314; 124–10163–10326; 124–10163–10332; 124–10163–10333; 124–10163–10338; 124–10163–10340; 124–10163–10349; 124–10163–10350; 124–10163–10351; 124–10163–10352; 124–10163–10353; 124–10163–10354; 124–10163–10355; 124–10163–10356.

After consultation with appropriate Federal Agencies, the Review Board announces that the following United States Secret Service records are now being opened in full:

154–10002–10232; 154–10002–10257; 154–10002–10297; 154–10002–10342; 154–10002–10425.

After consultation with appropriate Federal Agencies, the Review Board announces that the following House Select Committee on Assassination records are now being opened in full:

180–10065–10326; 180–10065–10337; 180–10065–10437; 180–10065–10438; 180–10066–10487; 180–10067–10294; 180–10067–10297; 180–10067–10344; 180–10067–10355; 180–10067–10356; 180–10067–10357; 180–10067–10358; 180–10067–10396; 180–10067–10435; 180–10067–10441; 180–10067–10442; 180–10067–10448; 180–10068–10492; 180–10070–10232; 180–10070–10247; 180–10070–10274; 180–10070–10296; 180–10070–10297; 180–10070–10304; 180–10070–10309; 180–10070–10315; 180–10070–10323; 180–10070–10347; 180–10070–10349; 180–10070–10353; 180–10070–10354; 180–10070–10358; 180–10070–10376; 180–10070–10390; 180–10070–10431; 180–10071–10060; 180–10071–10071; 180–10071–10072; 180–10071–10080; 180–10071–10092; 180–10071–10093; 180–10071–10102; 180–10071–10180; 180–10071–10182; 180–10071–10201; 180–10071–10214; 180–10071–10218; 180–10071–10221; 180–10071–10285; 180–10071–10286; 180–10071–10291; 180–10071–10341; 180–10071–10394; 180–10071–10451; 180–10072–10158; 180–10072–10164; 180–10072–10171; 180–10072–10260; 180–10073–10022; 180–10073–10029; 180–10073–10030; 180–10073–10043; 180–10073–10058; 180–10073–10096; 180–10073–10100; 180–10073–10103; 180–10073–10146; 180–10073–10147; 180–10073–10171; 180–10073–10173; 180–10073–10174; 180–10073–10175; 180–10074–10001; 180–10074–10153; 180–10074–10187; 180–10074–10212; 180–10074–10310; 180–10074–10326; 180–10074–10327; 180–10074–10391; 180–10074–10420; 180–10074–10445; 180–10074–10492; 180–10074–10493; 180–10074–10494; 180–10074–10496; 180–10075–10010; 180–10075–10047; 180–10075–10091; 180–10075–10126; 180–10075–10127; 180–10075–10129; 180–10075–10152; 180–10075–10175; 180–10075–10184; 180–10075–10188; 180–10075–10189; 180–10075–10190; 180–10075–10196; 180–10075–10208; 180–10075–10209; 180–10075–10211; 180–10075–10212; 180–10075–10219; 180–10075–10220; 180–10075–10222; 180–10075–10263; 180–10075–10264; 180–10075–10284; 180–10076–10264; 180–10076–10313; 180–10076–10334; 180–10076–10353; 180–10076–10357; 180–10076–10358; 180–10076–10399; 180–10076–10400; 180–10076–10404; 180–10077–10113; 180–10077–10137; 180–10077–10156; 180–10077–10175; 180–10077–10178; 180–10077–10191; 180–10077–10222; 180–10077–10232; 180–10077–10264; 180–10077–10268; 180–10077–10281; 180–10077–10286; 180–10077–10297; 180–10077–10408; 180–10077–10434; 180–10077–10435; 180–10077–10436; 180–10077–10437; 180–10077–10438; 180–10077–10439; 180–10077–10440; 180–10077–10441; 180–10077–10442; 180–10077–10443; 180–10077–10444; 180–10078–10003; 180–10078–10005; 180–10078–10028; 180–10078–10044; 180–10078–10053; 180–10078–10059; 180–10078–10062; 180–10078–10064; 180–10078–10065; 180–10078–10066; 180–10078–10072; 180–10078–10079; 180–10078–10128; 180–10078–10202; 180–10078–10338; 180–10078–10339; 180–10078–10340; 180–10078–10355; 180–10078–10372; 180–10078–10373; 180–10078–10374; 180–10078–10375; 180–10078–10376; 180–10078–10409; 180–10080–10208; 180–10080–10263; 180–10080–10347; 180–10080–10356; 180–10080–10363; 180–10080–10375; 180–10080–10376; 180–10080–10397; 180–10080–10399; 180–10080–10401; 180–10080–10409; 180–10080–10410; 180–10080–10411; 180–10080–10412; 180–10080–10421; 180–10080–10422; 180–10080–10430; 180–10080–10432; 180–10080–10436; 180–10080–10453; 180–10080–10484; 180–10081–10305; 180–10081–10326; 180–10081–10332; 180–10081–10362; 180–10081–10363; 180–10081–10369; 180–10081–10370; 180–10081–10371; 180–10081–10372; 180–10081–10373; 180–10081–10374; 180–10081–10380; 180–10081–10382; 180–10081–10384; 180–10081–10385; 180–10081–10386; 180–10081–10388; 180–10081–10389; 180–10081–10390; 180–10081–10391; 180–10081–10392; 180–10081–10393; 180–10081–10394; 180–10081–10395; 180–10081–10396; 180–10081–10399; 180–10081–10441; 180–10081–10442; 180–10081–10443; 180–10081–10444; 180–10081–10445; 180–10081–10486; 180–10081–10487; 180–10081–10490; 180–10081–10491; 180–10081–10493; 180–10081–10494; 180–10081–10495; 180–10081–10496; 180–10081–10497; 180–10081–10498; 180–10081–10499; 180–10082–10070; 180–10082–10082; 180–10082–10083; 180–10082–10147; 180–10082–10208; 180–10082–10209; 180–10082–10210; 180–10082–10226; 180–10082–10244; 180–10082–10245; 180–10082–10246; 180–10082–10323; 180–10082–10357; 180–10082–10391; 180–10082–10437; 180–10082–10438; 180–10082–10440; 180–10082–10487; 180–10083–10392; 180–10083–10393; 180–10083–10396; 180–10083–10397; 180–10083–10403; 180–10084–10022; 180–10084–10169; 180–10084–10286; 180–10084–10447; 180–10084–10481; 180–10085–10094; 180–10085–10129; 180–10085–10130; 180–10085–10132; 180–10085–10133; 180–10085–10140; 180–10085–10199; 180–10085–10456; 180–10085–10457; 180–10085–10458; 180–10086–10455; 180–10086–10456; 180–10086–10457; 180–10087–10122; 180–10087–10161; 180–10087–10361; 180–10087–10383; 180–10087–10414; 180–10088–10127; 180–10088–10128; 180–10088–10132; 180–10088–10135; 180–10088–10140; 180–10088–10393; 180–10088–10418; 180–10088–10419; 180–10088–10420; 180–10088–10421; 180–10088–10422; 180–10088–10423; 180–10088–10424; 180–10088–10425; 180–10088–10426; 180–10088–10427; 180–10088–10428; 180–10088–10429; 180–10088–10430; 180–10088–10431; 180–10088–10432; 180–10088–10433; 180–10088–10434; 180–10088–10435; 180–10088–10436; 180–10088–10437; 180–10088–10438; 180–10088–10439; 180–10088–10440; 180–10088–10441; 180–10088–10442; 180–10088–10443; 180–10088–10444; 180–10088–10445; 180–10088–10446; 180–10088–10447; 180–10088–10448; 180–10088–10449; 180–10088–10450; 180–10088–10451; 180–10088–10452; 180–10088–10453; 180–10089–10009; 180–10089–10010; 180–10089–10011; 180–10089–10012; 180–10089–10368; 180–10089–10384; 180–10089–10385; 180–10089–10434; 180–

10090–10010; 180–10090–10013; 180–10090–10017; 180–10090–10079; 180–10090–10084; 180–10091–10000; 180–10091–10001; 180–10091–10002; 180–10091–10004; 180–10091–10005; 180–10091–10006; 180–10091–10007; 180–10091–10008; 180–10091–10009; 180–10091–10010; 180–10091–10011; 180–10091–10015; 180–10091–10068; 180–10091–10124; 180–10091–10125; 180–10091–10235; 180–10091–10324; 180–10091–10333; 180–10092–10187; 180–10092–10188; 180–10092–10189; 180–10092–10190; 180–10092–10191; 180–10092–10192; 180–10092–10193; 180–10092–10194; 180–10092–10195; 180–10092–10196; 180–10092–10197; 180–10092–10198; 180–10092–10199; 180–10092–10200; 180–10092–10201; 180–10092–10202; 180–10092–10203; 180–10092–10204; 180–10092–10205; 180–10092–10206; 180–10092–10207; 180–10092–10208; 180–10092–10209; 180–10092–10210; 180–10092–10211; 180–10092–10212; 180–10092–10213; 180–10092–10214; 180–10092–10215; 180–10092–10216; 180–10092–10217; 180–10092–10218; 180–10092–10219; 180–10092–10220; 180–10092–10221; 180–10092–10222; 180–10092–10223; 180–10092–10224; 180–10092–10225; 180–10092–10226; 180–10092–10227; 180–10092–10228; 180–10092–10229; 180–10092–10230; 180–10092–10231; 180–10092–10232; 180–10092–10233; 180–10092–10234; 180–10092–10235; 180–10092–10236; 180–10092–10237; 180–10092–10238; 180–10092–10239; 180–10092–10240; 180–10092–10241; 180–10092–10243; 180–10092–10244; 180–10092–10245; 180–10094–10217; 180–10094–10218; 180–10094–10219; 180–10094–10237; 180–10094–10242; 180–10094–10244; 180–10094–10245; 180–10094–10246; 180–10094–10252; 180–10094–10261; 180–10094–10262; 180–10094–10263; 180–10094–10361; 180–10094–10455; 180–10095–10141; 180–10095–10142; 180–10095–10143; 180–10095–10146; 180–10095–10149; 180–10095–10150; 180–10095–10151; 180–10095–10152; 180–10095–10153; 180–10095–10154; 180–10095–10155; 180–10095–10251; 180–10095–10261; 180–10095–10263; 180–10095–10264; 180–10095–10284; 180–10095–10308; 180–10095–10392; 180–10095–10395; 180–10095–10405; 180–10095–10410; 180–10095–10420; 180–10096–10019; 180–10096–10059; 180–10096–10097; 180–10096–10098; 180–10096–10251; 180–10096–10264; 180–10096–10265; 180–10096–10283; 180–10096–10372; 180–10096–10373; 180–10096–10376; 180–10096–10381; 180–10096–10436; 180–10096–10443; 180–10097–10026; 180–10097–10168; 180–10097–10228; 180–10097–10229; 180–10097–10242; 180–10097–10243; 180–10097–10244; 180–10097–10245; 180–10097–10246; 180–10097–10294; 180–10097–10353; 180–10097–10354; 180–10097–10373; 180–10097–10400; 180–10097–10415; 180–10098–10281; 180–10098–10282; 180–10098–10285; 180–10098–10307; 180–10098–10308; 180–10098–10309; 180–10098–10310; 180–10098–10336; 180–10099–10073; 180–10099–10074; 180–10099–10084; 180–10099–10093; 180–10099–10096; 180–10099–10100; 180–10099–10102; 180–10099–10104; 180–10099–10106; 180–10099–10281; 180–10099–10305; 180–10099–10327; 180–10099–10345; 180–10099–10384; 180–10099–10433; 180–10099–10466; 180–10100–10078; 180–10100–10088; 180–10100–10124; 180–10100–10220; 180–10100–10221; 180–10101–10022; 180–10101–10087; 180–10101–10088; 180–10101–10125; 180–10101–10167; 180–10101–10169; 180–10101–10207; 180–10101–10235; 180–10101–10243; 180–10101–10246; 180–10101–10273; 180–10101–10274; 180–10101–10275; 180–10101–10340; 180–10101–10345; 180–10101–10363; 180–10102–10270; 180–10102–10328; 180–10102–10330; 180–10102–10331; 180–10102–10333; 180–10102–10334; 180–10102–10375; 180–10102–10420; 180–10102–10421; 180–10102–10422; 180–10102–10423; 180–10102–10436; 180–10102–10445; 180–10102–10446; 180–10102–10447; 180–10102–10455; 180–10102–10461; 180–10102–10475; 180–10103–10258; 180–10103–10273; 180–10103–10302; 180–10103–10337; 180–10103–10457; 180–10103–10459; 180–10103–10478; 180–10104–10227; 180–10104–10264; 180–10104–10371; 180–10104–10395; 180–10104–10397; 180–10104–10398; 180–10104–10419; 180–10104–10420; 180–10104–10428; 180–10104–10429; 180–10104–10432; 180–10104–10442; 180–10104–10459; 180–10104–10468; 180–10104–10469; 180–10104–10470; 180–10104–10484; 180–10104–10485; 180–10104–10486; 180–10105–10001; 180–10105–10308; 180–10105–10309; 180–10105–10342; 180–10105–10352; 180–10105–10381; 180–10105–10413; 180–10105–10461; 180–10105–10463; 180–10105–10467; 180–10106–10028; 180–10106–10036; 180–10106–10048; 180–10106–10087; 180–10106–10192; 180–10106–10366; 180–10106–10395; 180–10106–10425; 180–10106–10429; 180–10106–10447; 180–10106–10456; 180–10107–10062; 180–10107–10169; 180–10107–10231; 180–10107–10239; 180–10107–10244; 180–10107–10278; 180–10107–10453; 180–10108–10022; 180–10108–10055; 180–10108–10056; 180–10108–10057; 180–10108–10064; 180–10108–10065; 180–10108–10066; 180–10108–10076; 180–10108–10077; 180–10108–10088; 180–10108–10116; 180–10108–10180; 180–10108–10195; 180–10108–10198; 180–10108–10201; 180–10108–10204; 180–10108–10221; 180–10108–10233; 180–10108–10234; 180–10108–10235; 180–10108–10236; 180–10108–10237; 180–10108–10254; 180–10108–10255; 180–10108–10257; 180–10108–10274; 180–10108–10275; 180–10108–10328; 180–10109–10019; 180–10109–10056; 180–10109–10057; 180–10109–10058; 180–10109–10059; 180–10109–10060; 180–10109–10061; 180–10109–10140; 180–10109–10141; 180–10109–10284; 180–10109–10288; 180–10109–10313; 180–10109–10319; 180–10109–10338; 180–10109–10353; 180–10109–10437; 180–10109–10481; 180–10110–10010; 180–10110–10031; 180–10111–10042; 180–10111–10072; 180–10111–10074; 180–10111–10321; 180–10111–10322; 180–10111–10323; 180–10111–10338; 180–10111–10340; 180–10112–10051; 180–10112–10083; 180–10112–10093; 180–10112–10269; 180–10112–10281; 180–10112–10293; 180–10112–10297; 180–10112–10298; 180–10112–10299; 180–10112–10305; 180–10112–10337; 180–10112–10356; 180–10112–10358; 180–10112–10405; 180–10112–10423; 180–10112–10437; 180–10112–10440; 180–10112–10448; 180–10112–10449; 180–10112–10480; 180–10112–10482; 180–10112–10485; 180–10112–10494; 180–10113–10007; 180–10113–10009; 180–10113–10010; 180–10113–10431; 180–10113–10463; 180–10113–10482; 180–10113–10488; 180–10114–10068; 180–10114–10109; 180–10114–10121; 180–10114–10138; 180–10114–10239; 180–10115–10029; 180–10115–10044; 180–10115–10045; 180–10115–10046; 180–10115–10048; 180–10115–10049; 180–10115–10050; 180–10115–10051; 180–10115–10053; 180–10115–10054; 180–10115–10055; 180–10115–10056; 180–10115–10057; 180–10115–10058; 180–10115–10059; 180–10115–10061; 180–10115–10062; 180–10115–10063; 180–10115–10064; 180–10115–10068; 180–10115–10069; 180–10115–10155; 180–10115–10156; 180–10115–10224; 180–10115–10225; 180–10115–10226; 180–10115–10227; 180–10115–10228; 180–10115–10230; 180–10115–10232; 180–10115–10237; 180–10115–10238; 180–10115–10431; 180–10116–10024; 180–10116–10161; 180–10116–10202; 180–10116–10203; 180–10117–10050; 180–10117–10053; 180–10117–10093; 180–10117–10111; 180–10117–10112; 180–10117–10122; 180–10117–10129; 180–10117–10249; 180–10118–10016; 180–10118–10049; 180–10118–10051; 180–10118–10052; 180–10118–10053; 180–10118–10111; 180–10118–10134; 180–10119–10197; 180–10119–10213; 180–10120–10009; 180–10120–10011; 180–10120–10012; 180–10120–10015; 180–10120–10024; 180–10120–10040; 180–10120–10055; 180–10120–10123; 180–10120–10124; 180–10120–10127; 180–10120–10130; 180–10121–10021; 180–10128–10001; 180–10131–10131.

Notice of Additional Releases

It is the Board's policy to release duplicates of records on the same terms and conditions as those records which it previously voted. The following determinations are noticed pursuant to that policy:

FBI Documents, Open in Full:

124–10268–10155; 28; 0; n/a

FBI Documents, Postponed in Part:

124–10073–10299; 4; 1; 10/2017

Notice of Corrections

On June 5, 1996, the Review Board made formal determinations that were published in the June 21, 1996 Federal Register (FR Doc. 96–15835, 61 FR 31917). For that notice make the following corrections:

Record No.	Previously published	Correct data
104–10006–10229	3; 2; 06/2006	3; 3; 06/2006.
104–10013–10397	10; 7; 05/1997	10; 8; 05/1997.
104–10013–10004	915; 60; 12/1996	915; 62; 12/1996.
104–10014–10046	915; 60; 12/1996	915; 62; 12/1996.
104–10015–10008	915; 60; 12/1996	915; 62; 12/1996.
104–10086–10001	915; 60; 12/1996	915; 62; 12/1996.

In the August 26, 1996 Federal Register (FR Doc. 96–21620, 61 FR 43730), the Review Board published Additional Openings in Full. For that notice make the following correction:

Record No.	Correct data
124–10035–10024	6; 6; 09/2006.

Notice of Reconsideration

On September 27, 1996, the CIA provided additional evidence to the Review Board regarding one document that previously had been the subject of Review Board determinations. Upon Receiving and evaluating this additional evidence, the Review Board voted to sustain postponements as follows: From the original Federal Register Notice 96–21620, 61 FR 43730:

Record No.	No. original releases	No. original postponements	No. revised releases	No. revised postponements	Date of revised re-review
180–10131–10330	41	40	41	44	05/1997

Dated: October 11, 1996.

T. Jeremy Gunn,

General Counsel and Associate Director for Research and Analysis.

[FR Doc. 96–26742 Filed 10–17–96; 8:45 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 18, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 23 and 30, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 43523 and 45935) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cleaning and Degreasing Compounds
6850–01–430–7134
6850–01–430–7135
6850–01–430–7137
6850–01–430–7138
6850–01–430–7139
6850–01–430–7140

Compact Disc, Recordable
7045–01–429–3462
(Requirements for the Department of Defense)

Services

Disposal Support Services, Naval Air Station, Pensacola, Florida

Disposal Support Services, Defense Reutilization and Marketing Office, Agana, Guam

Janitorial/Custodial, Biscayne National Park, Dade County, Florida

Janitorial/Custodial, New Bedford Primary Care Clinic, 175 Elm Street, New Bedford, Massachusetts

Order Processing Service, Federal Prison Industries, Lexington, Kentucky

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–26807 Filed 10–17–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 18, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Tow Pin
3910–01–000–3015
NPA: Rauch Rehabilitation & Developmental Services, Inc. New Albany, Indiana

Services

Administrative Services, Defense Reutilization & Marketing Office, Building 4291, Fort Hood, Texas
NPA: Heart of Texas Goodwill Industries, Waco, Texas

Janitorial/Custodial

NEXCEN Pearl Harbor, Pearl Harbor, Hawaii
NPA: Opportunities for the Retarded, Inc., Wahiawa, Hawaii

Medical Transcription

Naval Hospital, Corpus Christi, Texas
NPA: Association for the Blind, Inc., Charleston, South Carolina

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Eraser, Blackboard
7510–00–244–9145
Cleaner, Tobacco Pipe
9920–00–292–9946

Services

Food Service Attendant, for the following locations:
Missouri Air National Guard, 10800 Lambert International Boulevard, Bridgeton, Missouri
Jefferson Barracks and Base, Building 280, #1 Grant Road, St. Louis, Missouri

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–26808 Filed 10–17–96; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m. on November 8, 1996, at the Radisson Encore Inn, 4300 Empire Place, Sioux Falls, South Dakota 57106. The purpose of the meeting is to plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jonathan Van Patten, 605–677–5361, or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1400 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 8, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–26794 Filed 10–17–96; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 p.m. on November 2, 1996, at the Double Tree Hotel—Albuquerque, 201 Marquette, N.W.,

Albuquerque, New Mexico 87102. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynda B. Eaton, 505–326–4338, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 7, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–26793 Filed 10–17–96; 8:45 am]

BILLING CODE 6335–01–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 25, 1996, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

Status:

Agenda

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Announcements
IV. Staff Director's Report
V. Project Planning—FY 1997 and FY 1998
VI. State Advisory Committee Report
''Federal Immigration Law Enforcement in the Southwest: Civil Rights Impacts on Border Communities''
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: October 16, 1996.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–26948 Filed 10–16–96; 3:02 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Rodco International, Inc.

In the Matter of: Rodco International, Inc., 1300 Patricia Drive #1403, San Antonio, Texas 78213, Respondent.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), having notified Rodco International, Inc. (Rodco) of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991 & Supp. 1996)) (the Act),[1] and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768–799 (1996), as amended (61 FR 12714 (March 25, 1996)) (the Regulations),[2] based on allegations that, between on or about June 12, 1992 and on or about December 3, 1993, Rodco exported U.S.-origin chemicals from the United States to Mexico on 11 separate occasions without obtaining the validated licenses required by Section 772.1(b) of the Regulations; and

BXA and Rodco having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It Is Therefore Ordered

First, that a civil penalty of $110,000 is assessed against Rodco, which shall be suspended in its entirely for a period of one year from the date of entry of this Order. Payment shall thereafter be waived, provided that, during the period of suspension, Rodco has committed no violation of the Act, or any regulation, order, or license issued thereunder.

Second, that for a period of two years from the date of this Order, Rodco International, Inc., 1300 Patricia Drive, #1403, San Antonio, Texas 78213, and all of its successors or assigns, and all of its officers, representatives, agents, and employees when acting for or on behalf of Rodco, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license,[3] License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notice of August 15, 1995 (60 FR 42767, August 17, 1995), and extended again on August 14, 1996 (61 FR 42527, August 15, 1996), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 1996)).

[2] The March 25, 1996 Federal Register publication redesignated, but did not republish, the existing Regulations as 15 C.F.R. Parts 768A–799A. In addition, the March 25 Federal Register publication restructured and reorganized the Regulations, designating them as an interim rule at 15 C.F.R. Parts 730–774, effective April 24, 1996.

[3] For purposes of this Order, ''license'' includes any general license established in 15 C.F.R. Parts 768A–799A.

has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, that the proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public. A copy of this Order shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 9th day of October 1996.

Frank W. Deliberti,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 96–26739 Filed 10–17–96; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[I.D. 100896A]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, Large Pelagic Committee, and Law Enforcement Committee will hold public meetings.

DATES: The meeting will be held on October 29–31, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Danfords Inn, 25 E. Broadway, Port Jefferson, NY 11777; telephone: 516–928–5200.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On October 29, the Executive Committee will meet from 8:00 a.m. until 2:30 p.m. The Large Pelagics Committee will meet from 2:30 p.m. until 5:00 p.m. On October 30, the Council will meet from 8:00 a.m. until 3:30 p.m. The Law Enforcement Committee will meet from 3:30 p.m. until 5:00 p.m. On October 31, the Council will meet from 8:00 a.m. until approximately 2:00 p.m.

The purpose of this meeting is to discuss the 1997 budget and the Council's program for future years, review catch statistics and the Shark Operations Team report, consider enforcement regulations for filleting of fish at sea, possible adoption of the Monkfish Fishery Management Plan for public hearings, review report of the October 24th Squid, Mackerel, and Butterfish Committee meeting, and other fishery management matters.

It is expected that Congressman Michael Forbes will meet with the Council sometime during the October 30th session.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 10, 1996.

Bruce Morehead,

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

[FR Doc. 96–26680 Filed 10–17–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 100996E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Vessel Monitoring Systems (VMS) Committee.

DATES: The meeting will be held on November 1, 1996, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, Pacific Room, Honolulu, HI; telephone: (808) 523–6151.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The VMS committee will hold a meeting to discuss and formulate recommendations for the Council to consider at its 91st meeting to be held on November 18–21, 1996. The VMS committee plans to discuss the upcoming conclusion of the 3-year Hawaii longline VMS program, mandatory VMS for the Northwestern Hawaiian Island lobster fishery, VMS for foreign vessels entering U.S. ports, VMS as a tool for data reporting, and consider other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: October 10, 1996.

Bruce Morehead,

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

[FR Doc. 96–26681 Filed 10–17–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 17, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ US Army Corps of Engineers, Directorate of Civil Works Operations Division, Regulatory Branch, 20 Massachusetts Avenue, NW, Pulaski Building, Washington, DC, 20314–1000, ATTN: CECW–OR (FRANK R. TORBETT).

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Application for a Department of the Army Permit.

Needs and Uses: Information is used to evaluate applications for permits to conduct work in navigable waters under Sections 9 and 10 of the Rivers and Harbors Act; permits for the discharge or dredged or fill material into waters of the United States under Section 404 of the Clean Water Act; and permits for the transportation of dredged or fill material for the purpose of ocean disposal under Section 103 of the Marine Protection, Research, and, Sanctuaries Act (Ocean Dumping Act).

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Annual Burden Hours: 77,500.

Number of Respondents: 15,500.

Responses Per Respondent: 1.

Average Burden Per Response: 5 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Information collected describes proposed construction or filling in U.S. waters. Projects are evaluated to determine if issuance of a permit will damage environment or impact other property. Respondents are private landowners, businesses, non-profit organizations and government. The application is a renewal of a previously authorized application approved in 1993.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–26790 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–M

Proposed Collection; Comment Request

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army, Defense Department.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 17, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Training and Doctrine Analysis Command, Fort Lee, Virginia 23801–6140, ATTN: ATRC–LP (Martin R. Walker). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Survey of Delayed Entry Program (DEP) Participants.

Needs and Uses: The information obtained through this study will be used by the Army to provide insights into the Delayed Entry Program. The Army will use this information to develop strategies specifically designed for DEP participants to reduce the number of individuals dropping out of the DEP.

Affected Public: Individuals or households.

Annual Burden Hours: 487.

Number of Respondents: 1105.

Responses per Respondent: 1.

Average Burden per Response: 21 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: DEP losses are a problem because it costs the Army millions of dollars each year. This survey effort supports the Army Enlisted Attrition Study (AFAS) by providing information regarding why contracted applicants don't enlist in the Army. This data will be used to design strategies to reduce DEP loss rate.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–26791 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–M

Environmental Assessment and Finding of No Significant Impact (FNSI) for Disposal and Reuse of Defense Personnel Support Center, Philadelphia, Pennsylvania

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The proposed action analyzed by this document is the disposal and reuse of the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania. The Defense Base Closure and Realignment Act of 1990, Public Law 101–510, required the closing of DPSC and the realignment of essential missions to other installations. The purpose of the Environmental Assessment (EA) is to identify and evaluate the anticipated effects of disposal by the Army and reuse of DPSC by non-Army entities.

The EA studied in detail three possible alternatives for complying with the recommendation to dispose of DPSC made by the Defense Secretary's Commission on Base Realignment and Closure. These alternatives included: no action; encumbered disposal in which the Army would identify and impose reuse constraints on future owners; and unencumbered disposal where potential encumbrances would be identified and removed by the Army prior to disposal of the property. The EA found that encumbered disposal of DPSC is the most desirable course of action to

comply with the Commission recommendation. Encumbered disposal of the site would also allow the Army to return surplus capacity to public or private use.

However, encumbered disposal of the DPSC would result in the Army imposing reuse constraints on future owners. For example, special easements would be required to maintain access to groundwater-monitoring wells, access for testing and inspection for environmental remediation, and access to conduct maintenance on parcels not yet disposed. In addition, special-use restrictions would prohibit entry into or interference with remedial operation and maintenance facilities or may permanently restrict certain uses of the property. Finally, property sale or transfer covenants may require a new owner to maintain significant historic buildings.

Additional constraints may be identified during future investigations of the property. These constraints would be identified and imposed by the Army at the time of deed transfer. Currently, the facility is in compliance with all applicable federal environmental statutes and executive orders.

The unencumbered alternative involves transfer without constraints such as easements or mitigation measures. Under this method of disposal, the Army would remove any constraints that could feasibly be removed before the transfer occurs. The removal of encumbrances before transfer could be costly and delay transfer.

Implementation of the no-action alternative would perpetuate maintenance costs incurred by the Army by requiring the Army to retain the property. Additionally, no remedial actions would be taken for known contaminants on the site.

The EA results in a Finding of No Significant Impact (FNSI); therefore, an Environmental Impact Statement (EIS) is not required for encumbered disposal of the DPSC.

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire regarding the FNSI by writing to Mr. Jerry Jones, U.S. Army Corps of Engineers, ATTN: CESAM–PD–EI, 109 St. Joseph Street, P.O. Box 2288, Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT:

Questions regarding this FNSI may be directed to the U.S. Army Corps of Engineers, ATTN: Mr. Jerry Jones, at (334) 690–2725.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 96–26774 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–M

Programmatic Environmental Impact Statement: Destruction of Non-Stockpile Chemical Warfare Materiel Containing Chemical Agent

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) on the destruction of chemical warfare materiel (CWM) containing chemical agent and to initiate the public scoping process for the PEIS. The PEIS is being prepared in accordance with the National Environmental Policy Act (NEPA), as amended.

The U. S. Army's Program Manager for Chemical Demilitarization has the responsibility for the destruction of the nation's chemical warfare materiel. The Program Manager has established project managers to accomplish this goal. The Project Manager for Chemical Stockpile Disposal is responsible for destroying the stockpile of unitary chemical weapons in the Department of Defense/Department of Army inventory (called stockpile). The PEIS for destroying the stockpile materiel was completed in 1988, and the destruction program is in progress at two locations—Johnston Island in the Pacific and Tooele, Utah. The Project Manager for Non-Stockpile Chemical Materiel (NSCM) analysis include: (1) on-site chemical treatment of CWM with off-site destruction of the resultant wastes either by thermal destruction or another disposal method; (2) on-site chemical treatment and on-site destruction/disposal of chemical treatment wastes (3) on-site thermal destruction; (4) off-site chemical treatment and/or thermal destruction or another disposal method; and (5) no action, which is defined as a continuation of the current methods for handling these types of CWM, including safely packing, shipping and storing CWM at permitted locations.

DATES: Written and oral comments on alternative strategies and their components (treatment, storage, transportation, and destruction/disposal) and the important environmental issues that should be evaluated in the PEIS are invited. Comments should be provided by February 28, 1997, to ensure consideration. Comments received after this date will be considered to the extent practicable.

To facilitate public participation and comment on the proposed scope of the PEIS, the Army will hold five regional public scoping meetings in the vicinity of Tampa, Florida; Newport, Indiana; Huntsville, Alabama; Salt Lake City, Utah; and San Antonio, Texas. The specific dates, times, and locations of these meetings will be announced in a separate Federal Register notice, by letter, and in appropriate news media. Repositories containing information on the NSCM Program and the PEIS will be established at these and other locations and will be identified in local media announcements.

ADDRESSES: Written comments on the scope of the PEIS should be sent to Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–NP (Mr. Dragunas/PEIS), Aberdeen Proving Ground, Maryland 21010–5401. Comments on the scope of the PEIS may also be made by calling the toll-free telephone number 1–800–410–9901.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–NP (Mr. Dragunas/PEIS), Aberdeen Proving Ground, Maryland 21010–5401. Requests for further information may also be made by calling the above listed toll-free telephone number.

SUPPLEMENTARY INFORMATION:

Background

The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of the Chemical Weapons and on Their Destruction, or Chemical Weapons Convention (CWC), requires the destruction of all CWM. The U.S. Army, as Executive Agent for the Department of Defense, is responsible for ensuring that NSCM is destroyed in a safe, environmentally sound and cost-effective manner. The U.S. and over 150 nations signed the CWC on January 13, 1993, and they and the U.S. are working towards ratification.

Buried CWM can be dated back to World War I. The practice of burying leaking or obsolete CWM in the past was an acceptable method of disposal. Often burial was accompanied by draining and decontamination. Therefore, the CWM is responsible for destroying all other CWM (called non-stockpile) within the United States and its territories.

The PEIS is specifically concerned with the following CWM containing chemical agent under the auspices of the Project Manager for Non-Stockpile Materiel: (1) CWM from former test ranges and burial sites once it is recovered; (2) CWM that has already been recovered and is currently in storage; and (3) research, development, test and evaluation (RDT&E) materiel used in CWM development and pre-production processes. Presently, materiel are either known to exist or possibly exist at 68 locations in 31 states, the Virgin Islands, and Johnston Island in the Pacific Ocean.

To achieve the destruction of chemical agent contained in the CWM considered in this PEIS, the Army proposes to select one or more strategies that (1) provide protection for human health, safety, and the environment and (2) enable the U. S. to comply with the requirements of the Chemical Weapons Convention. The selection of one or more strategies is needed by the Army in order to focus resources on, and provide for, a future destruction capability. The Non-Stockpile PEIS will analyze the potential environmental consequences of various alternative strategies that will meet these objectives.

Strategy components that could be used in alternative development may include any or all of the following: treatment, transportation and/or destruction/disposal. The preliminary alternatives that the Army is considering for analysis include: (1) on-site chemical treatment of CWM with off-site destruction of the resultant wastes either by thermal destruction or another disposal method; (2) on-site chemical treatment and on-site destruction/disposal of chemical treatment wastes (3) on-site thermal destruction; (4) off-site chemical treatment and/or thermal destruction or another disposal method; and (5) no action, which is defined as a continuation of the current methods for handling these types of CWM, including safely packing, shipping and storing CWM at permitted locations.

DATES: Written and oral comments on alternative strategies and their components (treatment, storage, transportation, and destruction/disposal) and the important environmental issues that should be evaluated in the PEIS are invited. Comments should be provided by February 28, 1997, to ensure consideration. Comments received after this date will be considered to the extent practicable.

To facilitate public participation and comment on the proposed scope of the PEIS, the Army will hold five regional public scoping meetings in the vicinity of Tampa, Florida; Newport, Indiana; Huntsville, Alabama; Salt Lake City, Utah; and San Antonio, Texas. The specific dates, times, and locations of these meetings will be announced in a separate Federal Register notice, by letter, and in appropriate news media. Repositories containing information on the NSCM Program and the PEIS will be established at these and other locations and will be identified in local media announcements.

ADDRESSES: Written comments on the scope of the PEIS should be sent to Program Manager for Chemical Demilitarization, ATTN: SFAE-CD-NP (Mr. Dragunas/PEIS), Aberdeen Proving Ground, Maryland 21010–5401. Comments on the scope of the PEIS may also be made by calling the toll-free telephone number 1–800–410–9901.

FOR FURTHER INFORMATION CONTACT: Program Manager for Chemical Demilitarization, ATTN: SFAE-CD-NP (Mr. Dragunas/PEIS), Aberdeen Proving Ground, Maryland 21010–5401. Requests for further information may also be made by calling the above listed toll-free telephone number.

SUPPLEMENTARY INFORMATION: Background: The Convention on the Prohibition of the Development, Production, Stockpiling, and Use of the Chemical Weapons and on Their Destruction, or Chemical Weapons Convention (CWC), requires the destruction of all CWM. The U.S. Army, as Executive Agent for the Department of Defense, is responsible for ensuring that NSCM is destroyed in a safe, environmentally sound and cost-effective manner. The U.S. and over 150 nations signed the CWC on January 13, 1993, and they and the U. S. are working towards ratification.

Buried CWM can be dated back to World War I. The practice of burying leaking or obsolete CWM in the past was an acceptable method of disposal. Often burial was accompanied by draining and decontamination. Therefore, the CWM underwent a form of destruction. In other cases, intact munitions were simply buried. These techniques reduced the risk to the public. These approaches sometimes resulted in incomplete and/or partial destruction. However, in certain situations, based on site-specific determinations, current technological limitations and stakeholder input, leaving the buried CWM in the ground may be preferable to excavation and destruction.

Non-Stockpile Chemical Materiel Program

The Project Manager for NSCM is responsible for the destruction of all CWM containing chemical agent in the U.S. and its territories not included in the nation's unitary stockpile of chemical weapons and chemical agent. Different types of NSCM include: (1) CWM from former test ranges and burial sites once it is recovered; (2) CWM that has already been recovered and is in storage: (3) binary chemical weapons and components; (4) former chemical weapon production facilities; (5) miscellaneous chemical warfare materiel.

This PEIS will focus on those specific types of NSCM that require similar decisions as to their destruction strategies. These include (a) CWM from former test ranges and burial sites once it is recovered; (b) CWM that has already been recovered and is in storage and (c) the RDT&E materiel portion of the miscellaneous materiel. Decisions concerning destruction strategies for binary chemical weapons and components; former production facilities; and the remainder of the miscellaneous materiel are independent of this PEIS and undergo appropriate levels of environmental review. These latter actions are independent because they consist mainly of demolition, recycling and/or disposal operations that use completely different destruction strategies than those under consideration in this PEIS and they do not contain chemical agent.

In accordance with Section 176 of 1993 Defense Authorization Act, the NSCMP has prepared a Survey and Analysis Report (1993), that identifies the locations, types, and quantities of NSCM. Since the issuance of the Report, the number of locations, types, and quantities of NSCM continue to be updated. The tables included with this notice lists the sites where CWM is presently known or could possibly exist. The Army continues to review historical documents and data to assess sites where past actions may have resulted in disposal of CWM by burial.

TABLE 1.—LOCATIONS WITH KNOWN OR POSSIBLE BURIED CHEMICAL WARFARE MATERIEL[1]

Alabama:
Camp Sibert
Fort McClellan
Redstone Arsenal
Alaska:
Cape Yakak Radio Station
Chicagof Harbor
Fort Wainwright
Gerstle River Expansion Area

TABLE 1.—LOCATIONS WITH KNOWN OR POSSIBLE BURIED CHEMICAL WARFARE MATERIEL[1]—Continued

- Gerstle River Test Site
- Unalaska Island

Arizona:
- Camp Navajo
- Yuma Proving Ground

Arkansas:
- Fort Chaffee
- Pine Bluff Arsenal
- Southwestern Proving Ground

California:
- Edwards Air Force Base
- Fort Ord
- Santa Rosa Army Air Field

Colorado:
- Pueblo Army Activity
- Rocky Mountain Arsenal

Florida:
- Brooksville Army Air Field
- MacDill Air Force Base
- Withlacoochee

Georgia:
- Fort Benning
- Fort Gillem

Hawaii:
- Kipapa Ammunition Storage
- Schofield Army Barracks

Illinois:
- Fort Sheridan
- Savanna Army Depot Activity

Indiana:
- Camp Atterbury Naval Surface Warfare Center, Crane Division
- Newport Chemical Activity

Iowa:
- Camp Dodge

Kentucky:
- Blue Grass Army Depot
- Fort Knox

Louisiana:
- Camp Claiborne
- England Air Force Base
- Fort Polk

Maryland:
- Aberdeen Proving Ground
- Fort Meade

Massachusetts:
- Fort Devens

Michigan:
- Chemical Warfare Development Division

Mississippi:
- Camp Van Dorn
- Columbus Army Airfield

Missouri:
- Camp Crowder

Nevada:
- Hawthorne Army Depot

New Jersey:
- Fort Hancock Naval Air Warfare Center, Lakehurst
- Raritan Arsenal

New Mexico:
- Fort Wingate Depot Activity

New York:
- Camp Hero

North Carolina:
- Camp Lejeune
- Laurinburg-Maxton Army Air Base

Ohio:
- Cleveland Plant
- Raven Army Ammunition Plant

Oregon:
- Umatilla Depot Activity

South Carolina:
- Charleston Naval Weapons Station

South Dakota:
- Black Hills Ordnance Depot

Tennessee:
- Defense Depot Memphis

Texas:
- Camp Bullis
- Camp Stanley Storage Activity

U.S. Virgin Islands:
- Water Island

Utah:
- Dugway Proving Ground (Formerly Used Defense Site)
- Dugway Proving Ground
- Tooele Army Depot
- Wendover Bombing and Gunnery Range

[1] Based on a U.S. Army Non-Stockpile Chemical Materiel Program Survey and Analysis Report, November 1993 updated data base which is unpublished.

TABLE 2.—LOCATIONS WITH RECOVERED CHEMICAL WARFARE MATERIEL AND RESEARCH, DEMONSTRATION, TESTING, AND EVALUATION MATERIEL[1]

Alabama:
- Anniston Army Depot
- Redstone Arsenal

Alaska:
- Fort Richardson

Arkansas:
- Pine Bluff Arsenal

Colorado:
- Pueblo Army Activity
- Rocky Mountain Arsenal
- Johnston Island

Kentucky:
- Blue Grass Army Depot

Maryland:
- Aberdeen Proving Ground

Oregon:
- Umatilla Depot Activity

Texas:
- Camp Bullis

Utah:
- Dugway Proving Ground
- Tooele Army Depot

[1] Based on a U.S. Army Non-Stockpile Chemical Materiel Program Survey and Analysis Report, November 1993 updated data base which is unpublished.

To achieve the destruction of certain types of CWM, the Army proposes to select and implement strategies that (1) provide the highest levels of protection for human health, safety, and the environment and (2) enable the U.S. to comply with the requirements of the Chemical Warfare Convention. The PEIS will analyze the potential environmental consequences of various alternative strategies that will meet this need.

Components of a strategy could include any or all of the following: treatment, transportation, and/or destruction/disposal. The alternatives that the Army is considering at this time for analysis include: (1) on-site chemical treatment of CWM with off-site destruction of the resultant wastes either by thermal destruction or another disposal method; (2) on-site chemical treatment and destruction of chemical treatment wastes (3) on-site thermal destruction; (4) off-site chemical treatment and/or thermal destruction or another disposal method; and (5) no action, which is defined as a continuation of the storage of recovered and RDT&E materiel, and the packaging, transportation and storage of future recovered buried CWM at permitted locations.

Decisions concerning whether sites should be excavated to recover possible CWM and how sites should be cleaned up are the responsibility of installation/site authorities. These site-specific decisions will determine whether a selected strategy is appropriate for each specific location.

The preliminary strategies that have been identified for evaluation in the PEIS are:

On-site Chemical Treatment and Off-site Destruction of Chemical Treatment Waste—Chemical agents in CWM would be chemically treated on site. Waste from chemical treatment and any other wastes such as metal body parts would be packaged in accordance with appropriate transportation regulations and the waste would then be transported off site for thermal destruction or another disposal method.

On-site Chemical Treatment and On-site Destruction/Disposal of Chemical Treatment Waste—Chemical agents in CWM would be chemically treated on site. Waste from chemical treatment would also be destroyed/disposed of on site. Any other waste such as metal body parts from the on-site treatment would be packaged in accordance with appropriate transportation regulations and then transported off site for disposal.

On-site Thermal Destruction—Chemical agents in CWM would be thermally destroyed on site. Any waste from thermal destruction such as ash and/or metal body parts would be packaged in accordance with appropriate transportation regulations and the waste would then be transported off site for disposal.

Off-site Chemical Treatment and/or Off-site Thermal Destruction—CWM containing chemical agents would be packaged in accordance with appropriate transport regulations and

then transported to an off site location. The CWM containing chemical agents would then be either chemically treated or thermally destroyed or disposed of by another method at the off-site location.

No Action—CWM containing chemical agent already in storage and RDT&E materiel would continue to be stored. CWM containing chemical agent recovered in the future would be packaged in accordance with appropriate transport regulations and then transported to an off-site location for long term storage at a permitted location.

For all disposal alternatives, treated residual metal parts would likely be recycled or disposed of in accordance with applicable environmental regulations.

The PEIS, as currently envisioned, will not evaluate specific off-site/on-site treatment and/or destruction/disposal locations under these strategies. Should the Army select an off-site destruction/disposal strategy, further environmental review would be required to determine the potential environmental consequences of implementing that strategy at that specific location. The PEIS will also not evaluate on-site contamination. This contamination will be handled under established environmental remediation/restoration procedures and regulations.

The important environmental issues that have been identified on a preliminary basis for evaluation and analysis in the PEIS are: (1) The potential impacts of the alternative strategies on air quality, water resources, and land resources; (2) the potential impacts to public health from the implementation of the destruction technologies; (3) the potential impacts to public health and safety from accidents that could occur during the handling, transport, storage, and destruction of CWM; and (4) the potential socioeconomic impacts of the alternative strategies.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits input to the EIS process to ensure that issues are identified early and properly studied. Scoping commences after a decision is made to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in the draft PEIS will be determined, in part, from written comments received by mail and oral comments received and recorded by phone and at the public meetings. The preliminary identification of alternatives and environmental issues is not meant to be exhaustive or final. The Army considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant study and new matters may be identified for potential evaluation.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or provide oral comments at a meeting or by phone to the addresses and phone numbers listed under the **DATES** section of this notice and/or attend a public meeting that will be announced in area news media.

The Army will use the public input received during scoping to develop a Statement of Scope to guide preparation of the PEIS. After completion, the Statement of Scope will be made available to scoping participants and the public upon request. The draft PEIS prepared from the scoping process will be made available for public review and comment. Notice of availability of the draft PEIS will be announced, written comments on the draft solicited, and information about a possible public meeting to comment on the draft will be published at a future date. The Army expects to release a final PEIS by mid-1999.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I,L&E).

[FR Doc. 96–26343 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–P

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 24 & 25 October 1996.

Time of Meeting: 0930–1600, 24 Oct 96, 0930–1600, 25 Oct 96.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Summer Study on ''Technical Architecture C4I'' will meet for briefings and discussions. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Program Support Specialist, Army Science Board.

[FR Doc. 96–26737 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 17 & 18 October 1996.

Time of Meeting: 0900–1600, 17 Oct 96, 0900–1700, 18 Oct 96.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on ''Global Broadcast Service'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Program Support Specialist, Army Science Board.

[FR Doc. 96–26738 Filed 10–17–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Intent To Repay to the Maine Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Correction notice.

DATE OF SETTLEMENT AGREEMENT AND PERIOD OF AVAILABILITY OF FUNDS: On April 2, 1996, the Secretary published in the Federal Register (61 FR 14598) a notice of intent to award grantback funds to the Maine Department of Education. Detailed information concerning the intended grantback award was contained in that notice. The purpose of this notice is to correct the execution date of the settlement agreement that resolved one of the audits, ACN: 01–93025, involved in the intended grantback award and to correct the period of availability of funds awarded through this grantback.

The execution date of the settlement agreement for ACN: 01–93025 is ''December 2, 1992.'' The funds

recovered under ACN: 01–932025 were available for expenditure until September 30, 1996. The funds recovered under ACN: 01–93245 and ACN: 01–13035 are available for expenditure until September 30, 1998.

FOR FURTHER INFORMATION CONTACT: William D. Tyrrell, Sr., U.S. Department of Education, 600 Independence Avenue, S.W., Room 3609 Switzer Building, Washington, D.C. 20202–6132. Telephone (202) 205–8825. 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. Internet: William__Tyrrell@ed.gov

(Catalog of Federal Domestic Assistance Numbers: 84.027 Handicapped State Grants; 84.012 Educationally Deprived Children; and 84.011 Chapter I—Migrant Education)

Dated: October 11, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–26702 Filed 10–17–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy; Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S–CA–454, for the sale of 4 grams of plutonium, enriched to 99.75% in the isotope plutonium-239, to the AECL Chalk River Laboratories in Canada for use in chemical research associated with reactor development and waste management.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: October 10, 1996.

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–26762 Filed 10–17–96; 8:45 am]

BILLING CODE 6450–01–P

Proposed Subsequent Arrangement

AGENCY: Office of Arms Control and Nonproliferation Policy, Department of Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract number S–JA–466 for the sale of 8 kilograms of lithium-6 (enriched to 95–96%), in the form of lithium carbonate to the Japan Radioisotope Association for use as thermal neutron shielding material in neutron capture therapy and for biomedical use.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: October 10, 1996

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–26763 Filed 10–17–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Availability of Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Final Environmental Impact Statement (Final EIS) for the Nevada Test Site (NTS) and Off-Site Locations in the State of Nevada (DOE/EIS–0243).

DATES: DOE intends to issue a Record of Decision on the NTS no sooner than 30 days from the date the U.S. Environmental Protection Agency Notice of Availability appears in the Federal Register.

ADDRESSES: Requests for a copy of the NTS Final EIS or its Summary should be directed to: Bob Golden, NEPA Compliance Officer, U.S. Department of Energy, Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518, phone (702) 295–4652 or by calling the Nevada Test Site EIS Hotline, 1–800–405–1140. Copies of the Final EIS will also be available in Reading Rooms listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information on the Department's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC, 20585, 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: This sitewide EIS evaluates the potential environmental impacts of four possible use alternatives being considered for the Nevada Test Site (NTS), the Tonopah Test Range, and the formerly operated DOE sites in the State of Nevada: the Project Shoal Area, the Central Nevada Test Area, and portions of the Nellis Air Force Range Complex. Three additional sites in Nevada—Coyote Spring Valley, Dry Lake Valley and Eldorado Valley—are evaluated for collocation of solar energy production facilities. The four alternatives include: No Action (Alternative 1)—continue to operate at the level maintained for the past 5 years; Discontinue Operations (Alternative 2)—discontinue operations and interagency programs and close the site; Expanded Use (Alternative 3)—maximize use of NTS and its resources to support defense and nondefense programs; and Alternate Use of Withdrawn Lands (Alternative 4)—discontinue all defense-related activities at NTS; continue waste management operations in support of NTS environmental restoration efforts; expand nondefense research.

The Department's preferred alternative includes the activities described in the Expanded Use alternative (Alternative 3) plus the educational activities described in Alternative 4. For purposes of providing a bounding analysis in the EIS,

Alternative 3 evaluates the impacts resulting from the maximum potential activities identified for the Nevada Test Site. However, the Department has identified in other EISs that the Nevada Test Site is not the preferred site for the proposed National Ignition Facility, the interim storage of plutonium pits, or weapons assembly/disassembly operations. Accordingly, the preferred alternative in this EIS does not include these activities, even though their impacts are included in Alternative 3. The preferred alternative is the most comprehensive alternative in supporting statutory mission responsibilities while providing for a diversification of use to include nondefense, interagency, public and private uses of the resources and capabilities available.

Environmental impacts were assessed for each alternative by analyzing, to the extent possible, the discrete and cumulative environmental impacts associated with defense, waste management, environmental restoration, nondefense research and development, and work for others programs.

The preparation of this EIS required the participation of several federal agencies, including the Department of Defense (Air Force and Defense Nuclear Agency), and the Department of the Interior (Bureau of Land Management and Fish and Wildlife Service), along with Nye County, Nevada.

Copies of the Final EIS will be available in Reading Rooms at the following locations:

1. DOE Public Reading Facility, 2621 Losee Road, Bldg B–3, North Las Vegas, NV 89030
2. Carson City Public Library, 900 N. Roop Street, Carson City, NV 89701
3. Doris Shirkey Library, 2101 E. Calvada Blvd., Pahrump, NV 89041
4. University of Nevada, Reno, Noble H. Getchell Library, Reno, NV 89557
5. Freedom of Information Reading Room, Forrestal Bldg, 1000 Independence Avenue SW, Washington, DC 20585
6. Las Vegas Public Library, 833 N. Las Vegas Blvd., Las Vegas, NV 89101
7. Tonopah Public Library, 171 Central Street, Tonopah, NV 89049
8. Caliente Branch Library, 100 Depot Avenue, Caliente, NV 89008
9. University of Nevada, Las Vegas, James Dickenson Library, 4505 S. Maryland Parkway, Las Vegas, NV 89154
10. Fallon Public Library, Churchill County Library, 553 S. Main, Fallon, NV 89406–3387
11. Washington County Library, 50 S. Main, St. George, UT 84770
12. Goldfield Library, P.O. Box 430, Goldfield, NV 89013
13. Silver Peak Library, P.O. Box 128, Silver Peak, NV 89047
14. Community College of Southern Nevada, Henderson Campus, Library Reading Room, 700 College Drive, Henderson, NV 89015
15. Amargosa Valley Community Library, HRC 69, Amargosa Valley, NV 89020–9701
16. White Pine Library, 950 Campton, Ely, NV 89301
17. Dyer Public Library, P.O. Box 105, Dyer, NV 89010
18. Community College of Southern Nevada, Cheyenne Campus, 3200 E. Cheyenne, Las Vegas, NV 89117
19. Community College of Southern Nevada, West Charleston Campus, Library Reading Room, 6375 W. Charleston Blvd, Las Vegas, NV 89102

Issued in Washington, DC, this 10th day of October, 1996.

James C. Landers,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 96–26761 Filed 10–17–96; 8:45 am]

BILLING CODE 6450–01–P

Announcement of Program Opportunity Notice (PON); In Support of the Gas Utilization/Gas-to-Liquids Program

AGENCY: U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC).

ACTION: Issuance of Program Opportunity Notice (PON).

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.8 (a)(2), and in support of the Gas Utilization/Gas-to-Liquids Program, it intends to issue a competitive financial assistance solicitation No. DE–PS22–96PC96052 leading to the selection and award of a cost-shared cooperative agreement to a qualified recipient. Applications will be subjected to a comparative merit review by a DOE technical panel, and one award will be made on the basis of the scientific merit of the application, utilization of relevant program policy factors, and the availability of funds. The solicitation is expected to be available on or about October 21, 1996. The solicitation will be provided electronically, using WordPerfect 6.1 for Windows, or on paper.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–143, Pittsburgh, PA 15236. Attn: John N. Augustine. Telephone: (412) 892–4524. FAX: (412) 892–6216. E-mail: augustin@petc.doe.gov

The solicitation will be posted on the internet at PETC's Home Page (http://www.petc.doe.gov). Requests for disk versions of the solicitation (3.5″, double-sided/high-density) may be made via letter, FAX, or e-mail. Paper copies can be made available upon request. TELEPHONE REQUESTS WILL NOT BE ACCEPTED FOR ANY VERSION OF THE SOLICITATION.

SUPPLEMENTARY INFORMATION:

Solicitation Number: DE–PS22–96PC96052.

Title of Solicitation: ''Engineering Development of Ceramic Membranes Reactor Systems for Converting Natural Gas to Synthesis Gas and Hydrogen''.

Objective: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) is interested in pursuing cost-shared research, development, and demonstration in the area of ''Engineering Development of Ceramic Membrane Reactor Systems for the Conversion of Natural Gas to Synthesis Gas and Hydrogen.'' The purpose of this proposed action is to solicit applications to advance the current state-of-the-art of ceramic membranes for the conversion of natural gas to synthesis gas (a mixture of carbon monoxide and hydrogen) and hydrogen to commercial readiness. The membrane-based technology is envisioned to couple air separation and methane partial oxidation into a single process step to be followed either by conversion of the synthesis gas to transportation fuels or the production of hydrogen. The goal of the proposed effort is to develop and demonstrate the technical, economic, and commercial feasibility of the membrane-based technology for the utilization of domestic remote natural gas, such as that found in Alaska, by 2008. A multi-budget period, multi-task approach to the development of the technology is sought, with decision points at critical junctures. Budget Period 1 will encompass ceramic material development, selection, and characterization, membrane/reactor module fabrication, seal and manifolding technology development, bench-scale process performance evaluations, and engineering and economic analyses. Budget Period 2 will involve the scale-up of the technology to an engineering prototype unit to demonstrate an integrated process, to obtain process engineering data, to validate design concepts, and to provide additional data to refine prior engineering and economic evaluations. Engineering models that represent the

fundamental physical and chemical phenomena in the membranes and are useful for the scale-up of the technology will also be developed. Budget Period 3 will utilize the technology data base and engineering models developed in Budget Periods 1 and 2 to design, fabricate, construct, and operate a fully integrated, proof-of-concept, commercially scalable process that reduces technical risks sufficiently to permit commercialization of the technology. A minimum cost-share of 50% in each budget period is expected from the participants, as well as repayment of the Government's share upon commercialization of the technology. The solicitation will be available on or about October 21, 1996. All requests for the solicitation package should be submitted in writing to the attention of John N. Augustine, Contract Specialist, U.S. Department of Energy, P.O. Box 10940 (MS 921–143), Pittsburgh, PA 15236–0940. NO TELEPHONE REQUESTS WILL BE ACCEPTED.

Term of Award

Total project: 8 years

Budget Period 1: 2.5 years

Budget Period 2: 2.5 years

Budget Period 3: 3 years

Awards: DOE anticipates issuing a single financial assistance cooperative agreement. DOE reserves the right to support or not support any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. The limitation on the maximum DOE funding for the selected cooperative agreement to be awarded under this financial assistance solicitation is approximately $35,000,000.

Solicitation Release Date: The solicitation is expected to be available on or about October 21, 1996. Applications must be prepared and submitted in accordance with the instructions and forms in the solicitation. To be eligible, applications must be received at the designated DOE office by the closing date stated in the solicitation.

Dale A. Siciliano,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 96–26764 Filed 10–17–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MT96–29–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 11, 1996.

Take notice that on September 26, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

First Revised Sheet No. 101
Original Sheet No. 101A

In the same filing, ANR withdrew the tariff sheets filed in this docket on September 3, 1996 (First Revised Sheet No. 68G and Original Sheet No. 68G.1).

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's August 2, 1996 ''Order Authorizing Abandonment and Determining Jurisdictional Status of Facilities,'' in the captioned proceeding. The revised tariff sheets address ''Standards of Conduct'' regarding ANR's affiliate, ANR Field Services Company and are located in the ''General Terms and Conditions'' section of ANR's tariff.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26730 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–43–000]

ANR Pipeline Company; Notice of Informal Settlement Conference

October 11, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, October 24, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26733 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–16–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 11, 1996.

Take notice that on October 7, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP97–16–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery to Ohio Cumberland Gas Company (OCGC), in Richland County, Ohio, under the blanket certificate issued in Docket No. CP83–76–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that the construction and operation of the new point of delivery has been requested by OCGC for firm transportation service for residential and industrial service. Columbia indicates that OCGC has not requested an increase in its peak day entitlements in conjunction with this request. Therefore, Columbia says there is no impact on Columbia's existing peak day obligations to its other customers as a result of the proposed new point of delivery. Columbia says it will provide transportation service for OCGC under Columbia's FTS Rate Schedule. Columbia estimates quantities will be 50 Dth per day and 18,250 Dth annually.

Columbia relates that the estimated cost to construct this new point of delivery is $10,000 which includes gross-up for income tax purposes. Columbia says that OCGC has agreed to

reimburse Columbia 100% of the total actual cost of the proposed construction.

Columbia says it will comply with all of the environmental requirements of Section 157.206(d) of the Commission's regulations prior to the construction of any facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26728 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–221–068]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

October 11, 1996.

Take notice that on October 8, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 20,000 MMBtu, not to exceed 3 Bcf of Frontier's gas storage inventory on an ''as metered'' basis to Western Gas Resources, Inc., for term ending March 31, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26725 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–317–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Technical Conference

October 11, 1996.

Pursuant to the Commission's order, issued on September 12, 1996, a technical conference will be held to resolve the issues raised in the above-captioned proceeding.

The conference will be held on Wednesday, October 23, 1996 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26734 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–46–001]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

October 11, 1996.

Take notice that on October 8, 1996, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective October 1, 1996:

Substitute Second Revised Sheet No. 4

Kentucky West is making this filing in compliance with the Commission's Order issued on September 27, 1996 to correct a transposition error. With the correction, the total minimum rate for its interruptible transportation rate schedule ITS drops from $0.0359 to $0.0357.

Kentucky West states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26735 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–15–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 11, 1996.

Take notice that on October 8, 1996, Koch Gateway Pipeline Company (Koch), 600 Travis Street, Houston, Texas 77251–1478 filed in Docket No. CP97–15–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to seek certificate authority for facilities constructed in San Augustine County, Texas under Section 311 of the Natural Gas Act (NGA), under the blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch states that it proposes to place into jurisdictional service a two-inch tap and meter station. Koch further states that this delivery point is located on its pipeline designated as Index 63 in San Augustine County, Texas. It is indicated that the estimated peak day and average day requirements for this delivery point are 100 MMBtu and 20 MMBtu, respectively. Koch asserts that

certification of the delivery point will not have an impact on Koch's annual deliveries or peak day operations because no change in the existing service levels are proposed.

Koch states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. Koch further states that its tariff does not prohibit the proposed change in jurisdictional status of the delivery point.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26724 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–19–000]

Lomex Oil & Gas Co., Mr. Jerry Lutz, Mr. & Mrs. Earl Coon, and Mr. & Mrs. Carl Meyers, Complainants, v. ANR Pipeline Company, Respondent; Notice of Complaint

October 11, 1996.

Take notice that on October 8, 1996, Lomex Oil & Gas Co., Mr. Jerry Lutz, Mr. & Mrs. Earl Coon, and Mr. & Mrs. Carl Meyers (collectively, Lomex), filed a complaint in Docket No. CP97–19–000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, and to the order amending certificate issued on September 13, 1996, in Docket No. CP96–337, in which the Commission authorized a revised boundary for ANR's Loreed Storage Field. In that order, the Commission denied Lomex's protest and motions stating that ''whether ANR has violated its certificate authorizations or open-access requirements would be more appropriately considered in the context of a complaint proceeding.'' Lomex charges that ANR Pipeline Company (ANR) has exceeded its certificated maximum reservoir pressure in the operation of its Loreed Storage Field, and that ANR unfairly refuses to transport gas produced from Lomex's Coon 1–36 well, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection. Lomex requests that the Commission give this matter expedited review and issue a show cause order without delay.

Any person desiring to be heard or to make a protest with reference to this complaint should on or before October 28, 1996, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before October 28, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26729 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–178–002]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment

October 11, 1996.

Take notice that on September 23, 1996, Maritimes & Northeast Pipeline, L.L.C. (Maritimes & Northeast), c/o M&N Management Company, 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed for authority under Section 7(c) of the Natural Gas Act (NGA) to construct, install, own, operate, and maintain a 30-inch diameter natural gas pipeline as an alternative to its currently proposed Phase I, 24-inch diameter pipeline from Dracut, Massachusetts to Wells, Maine (Docket No. CP96–178–000). The proposed facilities were included in an application to construct certain other facilities for Phase II of its project (Docket Nos. CP96–809–000).[1] We will sever those parts of the text and exhibits in Docket No. CP96–809–000 pertaining to the 30-inch pipeline from Dracut to Wells and treat them as an amendment to Phase I of Maritimes & Northeast's project (Docket No. CP96–178–002). Thus future filings concerning the 30-inch single pipeline alternative from Dracut to Wells should be filed under Docket No. CP96–178–002. Filings concerning the 30-inch pipeline alternative from Wells to Cumberland/Portland, Maine will be considered in Docket No. CP96–809–000. The details of Maritimes & Northeast's proposal are more fully set forth in its September 23rd filing, which is on file with the Commission and open to public inspection.

Maritimes & Northeast is a limited liability company, organized and existing under the laws of the state of Delaware. Maritimes & Northeast's members are M&N Management Company, a wholly-owned subsidiary of PanEnergy Corp.; Westcoast Energy (U.S.) Inc., a wholly-owned subsidiary of Westcoast Energy, Inc. and Mobil Midstream Natural Gas Investment, Inc., a wholly-owned subsidiary of Mobil Oil Corporation.

Maritimes & Northeast's Phase I project is from Dracut, Massachusetts to Wells, Maine. The Commission issued Preliminary Determination (PD) for this project on July 31, 1996, in Docket No. CP96–178–000. The project is currently under environmental review. A final certificate for Phase I has not yet been considered by the Commission.

The PD encouraged Maritimes & Northeast and the Portland Natural Gas Transmission System (PNGTS)[2] to consider a single pipeline alternative or a joint right-of-way between Haverhill, Massachusetts and Portland, Maine. As part of its September 23, 1996, filing for Phase II of its project,[3] Maritimes & Northeast submitted an engineering design for a 30-inch single pipeline alternative from Dracut to Cumberland/Portland. At this time the Commission Staff believes that the 30-inch alternative has enough capacity for it and PNGTS to share.

Maritimes & Northeast filed certain exhibits describing a 30-inch single-pipe alternative that it seeks to construct from Dracut to a proposed interconnection with Granite State Gas Transmission Company near Wells. Maritimes & Northeast says that its 30-inch single-pipe alternative is designed to accommodate service to PNGTS (or other arrangements such as a joint pipeline or common right-of-way) and

[1] A separate public notice of the application in Docket No. CP96–809–000 is being issued concurrently with Docket No. CP96–178–002.

[2] See Order issued July 31, 1996, in Docket Nos. CP96–248–000 and CP96–249–000.

[3] Phase II is a two-stage extension of Maritimes & Northeast's proposed project, first from Wells, Maine to Portland, Maine for 1998 interim service (south to north flow), and then from Portland to the Canadian border for 1999 service (provide access to Sable Island supply, north to south flow).

to meet the 1997 in-service requirements for Maritimes & Northeast's Phase I facilities. Maritimes & Northeast requests the Commission consider its 30-inch single-pipe alternative from Dracut to Wells in a timely manner in order that it may be approved, if selected as the most desirable alternative, in time for the 1997 Phase I commencement of service.

The Commission Staff, however, cannot establish a schedule for the proposed 30-inch pipeline alternative until Maritimes & Northeast files additional certificate application exhibits. These are, in part, further Exhibit G—Flow Diagrams and Exhibit K—Cost of Facilities. Further, Maritimes & Northeast and PNGTS should file, as soon as possible, the appropriate agreements for the specific joint-use structure of a single-pipe alternative or joint-use right-of-way. Also, Maritimes & Northeast should clarify whether the route for its 30-inch alternative is along the route currently being studied for its 23-inch proposal, along the route currently being studied for the PNGTS proposal, or a combination of the two.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 4, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Maritimes & Northeast to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26767 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–809–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Application

October 11, 1996.

Take notice that on September 23, 1996, Maritimes & Northeast Pipeline, L.L.C. (Maritimes & Northeast), c/o M&N Management Company, 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed an application in Docket No. CP96–809–000. The application seeks authority under Section 7(c) of the Natural Gas Act (NGA) to construct, install, own, operate, and maintain a large-diameter natural gas pipeline which would connect to Maritimes & Northeast's proposed Phase I facilities near Wells, Maine and extend about 230 miles to a point near Woodland, Maine. Maritimes & Northeast also proposes to construct certain natural gas compression stations and other smaller diameter natural gas pipeline laterals and spurs. Maritimes & Northeast has also filed an application in Docket No. CP96–810–000 for a Presidential Permit and authority under Section 3 of the NGA to construct and operate certain international border facilities near Woodland, Maine and St. Stephen, New Brunswick, Canada. The details of Maritimes & Northeast's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically Maritimes & Northeast proposes to construct about 229.6 miles of 24-inch and 1.8 miles of 30-inch mainline pipeline and two new mainline compressor stations. Each of the two proposed compressor stations will have a horsepower rating of 15,580. One is proposed to be located near Richmond, Sagadahoc County, Maine and the other is near Woodland, Washington County, Maine. Maritimes, & Northeast also proposes to build 154 miles of various pipeline laterals and meter stations in Maine near Cousins Island, Westbrook, Skowhegan, Bucksport, Oldtown and Millinocket, and Woodland. The total cost of these facilities is estimated to be $404 million.[1]

Maritime & Northeast is a limited liability company, organized and existing under the laws of the state of Delaware. Maritimes & Northeast's members are M&N Management Company, a wholly-owned subsidiary of PanEnergy Corp; Westcoast Energy (U.S.) Inc., a wholly-owned subsidiary of Westcoast Energy, Inc. and Mobile Midstream Natural Gas Investment, Inc., a wholly-owned subsidiary of Mobile Oil Corporation.

Maritimes & Northeast proposes to construct the facilities in two stages; the 42.1 miles of 24-inch pipeline from Wells, Maine to a point near Cumberland Center, Maine, the Cousins Island Lateral and the Westbrook Lateral would be constructed in 1998 (these facilities would cost about $63 million), and the remainder of the proposed facilities would be constructed in 1999 (these facilities would cost about $341 million). Maritimes & Northeast says that the facilities will have a design delivery capacity of 440,000 MMBtu per day.

Maritimes & Northeast says that the proposed facilities constitute Phase II of the Maritimes & Northeast Pipeline Project, a natural gas transportation facility for the Sable Offshore Energy Project (Sable Island). The Sable Island project is being developed by a consortium of United States and Canadian energy companies and is scheduled to make significant offshore supply available to eastern Canada and the northeastern United States in 1999. Maritimes & Northeast Pipeline Limited Partnership, a New Brunswick, Canada limited partnership consisting of Canadian affiliates of the members of Maritimes & Northeast, has filed an application with the Canadian National Energy Board requesting regulatory authorizations necessary to construct the Canadian portion of the Phase II facilities.

Maritimes & Northeast says that the need for firm natural gas transportation capacity from Sable Island to the Maine, New Hampshire, Massachusetts and other northeastern markets is evidenced by the precedent agreements executed by the parties and included as Exhibit I to the application. Maritimes & Northeast says that these precedent

[1] As part of the 1998 and 1999 Facilities discussed above, Maritimes & Northeast proposes to construct, install, own, operate and maintain ancillary above-ground appurtenant facilities, including but not limited to, mainline crossover and blowoff piping and valving, pressure regulating devices, gas metering equipment, cathodic protection devices, and launchers, receivers and associated piping and valves for internal inspection instruments and cleaning devices.

agreements were signed as a result of an open season it held on a non-discriminatory basis from March 18, 1996 through April 17, 1996. From April 17, 1996 to June 30, 1996, Maritimes & Northeast says that it clarified the service requests and negotiated the terms and conditions of such services. In addition, Maritimes & Northeast continued to aggressively market to potential customers who did not participate in the open season with the understanding that open season participants returning executed precedent agreements by June 30, 1996, had first call on U.S. Facility capacity, and any remaining capacity would be contracted on a first-come, first-served basis. Thus, as of June 30, 1996, seventeen shippers have now executed binding Precedent Agreements for long-term firm transportation service with Maritimes & Northeast, thus fully subscribing the propose design capacity of 440,000 MMBtu/d.

The precedent agreements were filed as privileged and confidential under Section 388.112 of the Commission's regulations. Maritimes & Northeast however announced the names of its proposed shippers and volumes assigned to each shipper. Finally, Maritimes & Northeast says that Mobil Natural Gas Inc. (Mobil), an affiliate of Mobil and one of the major Sable Island producers, has executed a twenty-year backstop Precedent Agreement for all capacity that is not subject to service agreements entered into by other parties from the date of commencement of Phase II service. This includes all capacity made available in the future because of the termination of the precedent agreements or service agreements prior to the end of the period of twenty years from the date of commencement of Phase II service. However, Maritimes & Northeast will continue to try to market any and all capacity that becomes available in spite of Mobil's backstop agreement.

Maritimes & Northeast says that the Phase II shippers will be ultimately responsible for obtaining the gas supplies to be transported through the Maritimes & Northeast facilities. Gas supplies needed for service through the 1998 Facilities will be available from the North American pipeline grid at negotiated prices. Maritimes & Northeast says that commencing November, 1999, all of the Phase II Facilities will be in service providing customers access to natural gas from Sable Island. Maritimes & Northeast also says that it has concurrently filed a request for blanket import and export authorization on behalf of its shippers and for itself for operational purposes with the Department of Energy, Office of Fossil Energy.

Maritimes & Northeast says that the precise method of financing Phase II has not been determined, but that no financing impediments are anticipated. Maritimes & Northeast anticipates that 25% of the required capital will be furnished by the Members as equity and that 75% will consist of non-recourse or limited recourse debt, initially raised during the construction period primarily from commercial banks and/or insurance companies. Maritimes & Northeast assumes that both the construction and long-term debt will bear interest at the rate of eight percent (8.0%) and be retired over 20 years. Maritimes & Northeast also proposes that its equity investment earn at the rate of fourteen percent (14.0%).

Maritimes & Northeast says that the proposed rates are straight-fixed-variable (SFV) rates and reflect a roll-in of the Phase I costs. The rates are designed to recover the costs of the facilities proposed herein over the life of those facilities. Maritimes & Northeast says that the rates for interim service utilizing the 1998 Facilities will be rates negotiated at a level at or below the maximum rates for Phase I. The cost of all 1998 Facilities will be deferred and rolled into total system costs, after a credit (if any) for net revenues received from shippers using the 1998 Facilities, and will be used to develop the U.S. Facilities rates to be effective when the 1999 Facilities are placed in service.

The proposed rates and charges for services proposed to be rendered by Maritimes & Northeast are set forth in its *pro forma* FERC Gas Tariff, included in Exhibit P of the application. Maritimes & Northeast requests authorization to charge the rates referenced above as its initial rates. Services proposed to be offered by Maritimes & Northeast include a 365-day firm transportation service (MN365), 151-day and 90-day firm seasonal services (MN151 and MN90) and firm off-peak service (MNOP). Interruptible service will be available under Rate Schedule MNIT.

Maritimes & Northeast says that the Phase II tariff, First Revised Volume No. 1, is based upon the Phase I tariff, with certain modifications to reflect the interconnection of the facilities of Maritimes & Northeast with the Canadian facilities at the international border and to reflect certain changes required by the Commission's July 31, 1996, Preliminary Determination for Phase I.

Maritimes & Northeast proposes that Rate Schedule MN365 be a recourse rate schedule for Phase II. Costs have been allocated to service under Rate Schedule MN365. Maritimes & Northeast proposes that Rate Schedules MN151, MN90 and MNOP be treated as negotiated rates, subject to the treatment accorded in *Shell Gas Pipeline Company.*[2] Maximum and minimum rates are stated on the tariff rate sheets for each such rate schedule in accordance with *Shell.* Maritimes & Northeast will record each volume transported, billing determinant, rate component, surcharge, and revenue associated with its negotiated rates so that these may be filed and separately identified, and separately totaled, in all future rate case filings.

Finally, Maritimes & Northeast says that a uniform incremental lateral line rate has been developed for transportation on the laterals commencing in 1999. The lateral line rate is designed to ensure that customers regarding service on lateral lines will pay separate rates for that service reflecting certain of the costs of that service in addition to the mainline rate.

Maritimes & Northeast says that the pipeline and lateral routes are environmentally sound and utilize existing rights-of-way corridors for approximately 64% of the route. Further, Maritimes & Northeast says that the environmental information provided in Exhibits F–I through F–IV meets the technical requirements necessary for Commission Staff to begin an environmental analysis as defined in the Commission's August 1995 ''Guidance Manual for Environmental Report Preparation''. However, Maritimes & Northeast has not provided the exact locations of the two compressor stations and the various above-ground facilities proposed in the application. The Commission Staff cannot establish a schedule for completion of the environmental impact statement until that information is received. Furthermore, the *Draft Environmental Impact Statement* can not be issued until after the cultural resources field investigation report, and the major river crossing plans (including the St. Croix River importation point proposed in Docket No. CP96–810–000) are filed and analyzed.

Maritimes & Northeast also filed certain exhibits describing a 30-inch single-pipe alternative that it seeks to construct from Dracut, Massachusetts to a proposed interconnection with the Portland Natural Gas Transmission System (PNGTS) near Portland Maine. Maritimes & Northeast says that its 30-inch single-pipe alternative is designed

[2] See Order Issuing Blanket Certificate in Docket No. CP96–159–002 on July 31, 1996 at 76 FERC ¶ 61,126.

to accommodate service to PNGTS (or other arrangements such as a joint pipeline or common right-of-way) and to meet the 1997 in-service requirements for Maritimes & Northeast's Phase I facilities. Maritimes & Northeast requests the Commission consider its 30-inch single-pipe alternative from Dracut to Portland in a timely manner in order that it may be approved, if selected as the most desirable alternative, in time for the 1997 Phase I commencement of service. However, the Commission has docketed as Docket No. CP96–178–002, the Dracut to Wells part of this request as an amendment to Maritimes & Northeast's Phase I application.[3] The Commission Staff is unable to establish a schedule for this request unless Maritimes & Northeast files additional pipeline certificate exhibits concerning the amendment and further information about the specific nature of the shared use of a single pipeline or right-of-way.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 4, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the application is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion, believes that a formal hearing is required, further notice of such hearing will be given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Maritimes & Northeast to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26768 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[3] The amendment was included in parts of the text and exhibits filed by Maritimes and Northeast in this filing, (Docket No. CP96–809–000). The Commission will sever those parts of the text and exhibits and treat them as an amendment to Phase I. Hereafter, filings concerning the 30-inch single pipeline alternative for the distance from Dracut to Wells should be filed under Docket No. CP96–178–002. Filings concerning the 30-inch pipeline alternative from Wells to Cumberland/Portland, Maine will be considered in this case, (Docket No. CP96–809–000).

[Docket No. CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Application for Authorization To Construct, Operate and Maintain Border Facilities and for Presidential Permit

October 11, 1996.

Take notice that on September 23, 1996, Maritimes & Northeast Pipeline, L.L.C. (Maritimes & Northeast), c/o M&N Management Company, 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed an application in Docket No. CP96–810–000. The application seeks authorization to site, construct, operate and maintain pipeline facilities at the United States-Canada International Boundary near Woodland, Maine and St. Stephen, New Brunswick, Canada. A Presidential Permit for these border facilities is sought under Executive Order No. 10485, as amended by Executive Order No. 12038, Secretary of Energy Delegation Order No. 0204–112 and Sections 153.10 through 153.12 for the Commission's regulations. Section 3 authorization to site, construct, operate and maintain facilities is sought under Section 3 of the Natural Gas Act (NGA), Secretary of Energy Delegation Order No. 0204–112 and Sections 153.1 through 153.8 of the Commission's Regulations. The details of Maritimes & Northeast's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

Maritimes & Northeast is a limited liability company, organized and existing under the laws of the state of Delaware. Maritimes & Northeast's members are M&N Management Company, a wholly-owned subsidiary of PanEnergy Corp; Westcoast Energy (U.S.) Inc., a wholly-owned subsidiary of Westcoast Energy, Inc. and Mobil Midstream Natural Gas Investment, Inc., a wholly-owned subsidiary of Mobil Oil Corporation.

Maritimes & Northeast says that the proposed border facilities will connect Maritimes & Northeast's proposed United States Phase II facilities with the Canadian facilities to be constructed by Maritimes & Northeast's Canadian affiliate, Maritimes & Northeast Pipeline Limited Partnership (''M & N Limited Partnership''). Authority to construct Maritimes & Northeast's proposed United States Phase II facilities has been requested under Section 7 of the NGA in an application filed contemporaneously in Docket No. CP96–809–000.

Maritimes & Northeast says that the specific facilities proposed to be constructed at the above-described point on the United States-Canada International Border will consist of the following:

(1) about 400 feet of 30-inch diameter high-pressure pipeline placed at a depth not less than five feet beneath the river bed of the St. Croix River,

(2) associated valving on each side of the river, and

(3) check-meter facilities located approximately 1.8 miles from the border on the United States side.

However, Maritimes & Northeast has not provided site specific river crossing environmental information. The Commission Staff cannot establish a schedule for completion of its environmental review until that information is received.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 4, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Maritimes & Northeast to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26769 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–000]

NE HUB Partners, L.P.; Notice of Site Visit for the Proposed NE HUB Tioga Storage Project

October 11, 1996.

On October 23 and 24, 1996, the Office of Pipeline Regulation staff will conduct a site visit with representatives of NE HUB Partners, L.P. of the locations related to the facilities proposed in the NE Hub Tioga Storage Project in Tioga County, Pennsylvania. All interested parties may attend. Those planning to attend must provide their own transportation.

Information about the proposed project is available from Mr. John Wisniewski, Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26726 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–12–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 11, 1996.

Take notice that on October 4, 1996, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP97–12–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a new delivery tap, located in Ellis County, Oklahoma, to accommodate interruptible natural gas deliveries to GPM Gas Corporation (GPM) under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery tap in Ellis County, Oklahoma, to accommodate interruptible natural gas deliveries to GPM. Northern states they will install a tee and valve at the site of the proposed delivery tap. GPM states they will install a meter, construct, own, and operate the nonjurisdictional facilities downstream of Northern's existing first above ground valve. GPM has requested the construction of the proposed delivery tap to provide compressor fuel and starting gas for use at its plant.

Northern advises that the proposed volumes to be delivered for GPM at the proposed delivery tap are 2,000 MMBtu on a peak day and 20,000 MMBtu on an annual basis. Northern estimates the cost of constructing the proposed delivery tap to be $6,000. Northern states GPM will reimburse them for the total cost of construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26727 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR97–1–000]

Rio Grande Pipeline Company; Notice of Petition for Declaratory Order

October 11, 1996.

Take notice that on October 7, 1996, Rio Grand Pipeline Company (Rio Grande) pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, filed a petition for declaratory order.

Rio Grande requests that the Commission issue a declaratory order allowing it to include in any cost-of-service computations justifying the rates to be charged by Rio Grande the full purchase price of a refined products pipeline (the acquired line), to which it has acquired title and will refurbish, convert, and utilize as part of a new natural gas liquid pipeline—Rio Grande Pipeline (the new NGL line). Rio Grande states that the new NGL line will constitute a new public use of the acquired line and will result in a wide range of benefits to ratepayers, which will include, but are not limited to, reduced transportation costs and more reliable transportation service.

Rio Grande requests that the Commission handle this matter on an expedited basis and shorten the 30 day notice provision in Rule 213(d)(2)(ii) of the Commission's Rules of Practice and Procedure to 20 days. Rio Grande requests that the Commission render a decision on this petition as soon as possible, but no later than December 31, 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, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 31, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26731 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2498–000, et al.]

Carolina Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER96–2498–000]

Take notice that on October 3, 1996, Carolina Power & Light Company amended the original filing made in this docket on July 20, 1996.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Strategic Energy Ltd.

[Docket No. ER96–3107–000]

Take notice that on September 27, 1996, Strategic Energy Ltd. tendered for filing an Application for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule.

Comment date: October 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER96–3157–000]

Take notice that on September 30, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, pursuant to Section 205 of the Federal Power Act, a tariff for inter-connection services between Niagara Mohawk and Megan-Racine Associates, Inc. (Megan-Racine).

Niagara Mohawk states that copies of its filing have been provided to Megan-Racine and to the New York Public Service Commission.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Wisconsin)

[Docket No. ER97–1–000]

Take notice that on October 1, 1996, Northern States Power Company, Eau Claire, Wisconsin (NSPW), tendered for filing the following document:

Power and Energy Supply Agreement by and between the Village of Bangor, Wisconsin, and NSPW dated July 9, 1996. The Village currently purchases power and energy from NSPW under a Power and Energy Supply Agreement dated April 1, 1992, as amended by a First Amendment to Power and Energy Supply Agreement dated May 30, 1994. NSPW submitted a Certificate of Concurrence, dated September 20, 1996, on behalf of the Village of Bangor.

NSPW requests an effective date of November 1, 1996. NSPW states that under this new agreement, the Village of Bangor will be entitled to discounts from NSPW's currently effective W–1 rate and that such discounts are being offered to all of its wholesale electric customers. The agreement contains a provision allowing the customer to obtain a negotiated rate upon two years prior notice.

A copy of the filing was served upon the Village of Bangor and the State of Wisconsin Public Service Commission.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–2–000]

Take notice that on October 1, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with USGen Power Services, L.P. (USGen) to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour. Energy ad capacity sold by USGen will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon USGen.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. The Toledo Edison Company

[Docket No. ER97–3–000]

Take notice that on October 1, 1996, The Toledo Edison Company filed an agreement for payment of a contribution in aid of construction by a wholesale electric service customer, American Municipal Power-Ohio, Inc., to The Toledo Edison Company.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER97–4–000]

Take notice that on October 1, 1996, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and TransCanada Power Corp. FPL requests an effective date of October 4, 1996.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Washington Water Power

[Docket No. ER97–5–000]

Take notice that on October 1, 1996, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, two service agreements under FERC Electric Tariff Volume No. 4 with McMinnville Water & Light and Benton County PUD.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Company

[Docket No. ER97–6–000]

Take notice that on October 1, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Minnesota Power & Light Company (Minnesota Power). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Minnesota Power.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER97–7–000]

Take notice that on October 1, 1996, The Washington Water Power Company (WWP), tendered for filing pursuant to 18 CFR 385.205, proposed market-based rate tariff set forth as its FERC Electric Rate Schedule No. 9 to be effective the earlier of October 1, 1996 or the date the Commission issues an Order in this Docket.

WWP intends to engage in electric power and energy transactions on rates, terms, and conditions to be mutually agreed to with the purchasing party. WWP is proposing to add these market-based rate tariffs to its already existing FERC tariffs. Service provided under existing tariffs is not expected to be eliminated.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER97–8–000]

Take notice that on October 1, 1996, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and WPS Energy Services, Inc. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to WPS Energy Services, Inc.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER97–9–000]

Take notice that on October 1, 1996, PSI Energy, Inc. (PSI), tendered for filing the Transmission and Local Facilities (T&LF) Agreement Calendar Year 1995 Reconciliation between PSI and Wabash Valley Power Association, Inc. (WVPA), and between PSI and Indiana Municipal Power Agency (IMPA). The T&LF Agreement has been designated as PSI's Rate Schedule FERC No. 253.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER97–10–000]

Take notice that on October 1, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Sonat Power Marketing L.P. for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of September 4, 1996.

Copies of the filing were served on Sonat and the Public Utility Commission of Texas.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. The Toledo Edison Company

[Docket No. ER97–11–000]

Take notice that on October 2, 1996, The Toledo Edison Company, filed an agreement for payment of a contribution in aid of construction by a wholesale electric service customer, Buckeye Power Inc., to The Toledo Edison Company.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER97–12–000]

Take notice that on October 2, 1996, Florida Power & Light Company, filed a letter notice dated September 24, 1996, from Florida Keys Electric Cooperative Association, Inc. to FPL. This letter contains information provided pursuant to Section 11.1 of the Long-Term Agreement to Provide Capacity and Energy by Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc., dated August 15, 1991. FPL requests that the proposed notice be made effective January 1, 1997.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power & Light Company

[Docket No. ER97–13–000]

Take notice that on October 2, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Valero Power Services Company for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on October 1, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER97–14–000]

Take notice that on October 2, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to Progress Power Marketing, Inc. pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on October 3, 1996.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER97–15–000]

Take notice that on October 2, 1996, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for service to CNG Power Services Corporation pursuant to its open access transmission tariff (the T–6 Tariff). Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on October 3, 1996.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER97–16–000]

Take notice that on October 2, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and TransCanada Power Corp. This Transmission Service Agreement specifies that TransCanada Power Corp. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and TransCanada Power Corp. to enter into separately scheduled transactions under which NMPC will provide transmission service for TransCanada Power Corp. as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the customer.

NMPC requests an effective date of September 23, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and TransCanada Power Corp.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER97–17–000]

Take notice that on October 2, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Western Power Services, Inc. This Transmission Service Agreement specifies that Western Power Services, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Western Power Services, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Western Power Services, Inc. as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the customer.

NMPC requests an effective date of September 23, 1996, NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Western Power Services, Inc.

Comment date: October 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. P&T Power Company

[Docket No. ER97–18–000]

Take notice that on October 2, 1996, P&T Power Company (P&T), tendered for filing FERC Electric Service Rating Schedule No. 1, together with a petition for waivers and blanket approvals of various Commission Regulations necessary for such Rate Schedule to become effective 51 days after the date of filing.

P&T states that it intends to engage in electric power and energy transactions as a marketer, and that it proposed to make sales under rates, terms and conditions to be mutually agreed to with the purchasing party. P&T further states that it is not in the business of generating, transmitting or distributing electric power.

Comment date: October 24, 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. 96–26766 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Transfer of Licenses

October 11, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of Licenses.

b. *Project Nos.:* 2808–009, 2809–010, 3562–018, and 4202–017.

c. *Date Filed:* September 25, 1996.

d. *Applicants:* Consolidated Hydro Maine, Inc., Ridgewood Maine Hydro Partners, L.P.

e. *Name of Projects and Locations:*

Barker's Mill ''Lower Barker'', on the Little Androscoggin River, in Androscoggin County, Maine

American Tissue ''Gardiner'', on the Cobbosseecontee Stream, in Kennebec County, Maine

Barker Mill ''Upper Barker'', on the Little Androscoggin River, in Androscoggin County, Maine

Lowell Tanner ''Pumpkin Hill'', on the Passadumkeag River, in Penobscot County, Maine

f. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791–825(r).

g. *Applicants Contact:* Stephen E. Champagne, Esq., Curtis Thaxter Stevens Broder & Micoleau, LLC, One Canal Plaza, P.O. Box 7320, Portland, ME 04112, (207) 775–2361.

h. *FERC Contact:* Regina Saizan, (202) 219–2673.

i. *Comment Date:* November 6, 1996.

j. *Description of Request:* Consolidated Hydro Maine, Inc. (Consolidated), licensee for the above projects, and Ridgewood Maine Hydro Partners, L.P. (Ridgewood) request that the licenses for the projects be transferred from Consolidated to Ridgewood. Consolidated is being merged into Ridgewood to facilitate a change in the beneficial interest in the projects. There is no debt associated with the mergers.

k. *This notice also consists of the following standard paragraphs:* B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26732 Filed 10–17–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5637–7]

Contractor Access to Confidential Business Information Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized the following contractors for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. (1) Environmental Consulting and Research (EC/R) Incorporated, 3721–D University Drive, Durham, North Carolina 27707, contract number 68D60010; (2) Eastern Research Group (ERG) Incorporated, 1600 Perimeter Park, Morrisville, NC 27560, contract number 68D60011; (3) Midwest Research Institute (MRI), Suite 350, 401 Harrison Oaks Boulevard, Cary, NC 27513, contract number 68D60012; (4) Pacific Environmental Services (PES), 5001 South Miami Boulevard, Central Park West, Research Triangle Park, NC 27709, contract number 68D60013; (5) Research Triangle Institute (RTI), P.O. Box 12194, Research Triangle Park, NC 27709, contract number 68D60014.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under section 114 of the CAA that EPA may provide the above mentioned contractors access

to these materials on a need-to-know basis. These contractors will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in economic impact assessment for Federal Air Pollution Control Regulations.

In accordance with 40 CFR 2.301(h), EPA has determined that each contractor requires access to CBI submitted to EPA under sections 112 and 114 of the CAA in order to perform work satisfactorily under the above noted contracts. The contractors' personnel will be given access to information submitted under section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The contractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to CBI. All contractor access to CAA CBI will take place at the contractors' facility. Each contractor will have appropriate procedures and facilities in place to safeguard the CAA CBI to which the contractor has access.

Clearance for access to CAA CBI is scheduled to expire on September 30, 1998 under contract 68D40099 and on September 30, 1997 under contract 68D40107.

Dated: October 9, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–26817 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5473–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 7, 1996 Through October 11, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960479, Final EIS, IBR, CA, American River Bridge Crossing Project, Construction and Roadway Improvement, Funding, Right-of-Way Approval, Coast Guard Bridge Permit and COE Section 404 Permit, City of Folsom, Sacramento County, CA, Due: November 18, 1996, Contact: Doug Kleinsmith (916) 979–2482.

EIS No. 960480, Draft EIS, AFS, ID, Prince John Timber Sale Project, Implementation, Boise National Forest, Cascade Ranger District, Valley County, ID, Due: December 2, 1996, Contact: Steve Patterson (208) 364–7400.

EIS No. 960481, Draft EIS, FHW, WV, WV–9 Corridor Transportation Improvements, Berkeley Spring to Martinsburg, Morgan and Berkeley Counties, WV, Due: December 13, 1996, Contact: David A. Leighow (304) 347–5268.

EIS No. 960482, Draft EIS, NPS, WA, Lake Crescent Management Plan, Implementation, Olympic National Park, WA, Due: December 17, 1996, Contact: Joe Dunstan (206) 220–4273.

EIS No. 960483, Draft EIS, AFS, UT, Alta Ski Area Master Development Plan Update Approval, Special-Use-Permit and COE Permits Issuance, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, UT, Due: December 2, 1996, Contact: Robert Cruz (801) 943–9438.

EIS No. 960484, Final EIS, BLM, NV, Talapoosa Gold Mine Project, Construction and Operation, Plan of Operations Approval, Special-Use-Permit and COE Section 404 Permit Issuance, Silver Springs, Lyon County, NV, Due: November 18, 1996, Contact: Ron Moore (702) 885–6000.

EIS No. 960485, Final AL EIS, COE, FL, Brevard County Shore Protection Study, Implementation, Beach Restoration Project, Brevard County, FL, Due: November 18, 1996, Contact: Michael Dupes (904) 232–1689.

EIS No. 960486, Final EIS, AFS, NV, Spring Mountains National Recreation Area General Management Plan, Toiyabe National Forest Land and Resource Management Plan, Amendment, Implementation, Clark and Nye Counties, NV, Due: November 18, 1996, Contact: Alan Pinkerton (702) 873–8800.

EIS No. 960487, Final EIS, DOE, NV, Nevada Test Site (NTS) and Off-Site Locations, Implementation, at the Following Sites: Tonopah Test Range; Portions of the Nellis Air Force Range (NAFR) Complex; the Central Nevada Test Area and Shoal Area Project, Nye County, NV, Due: November 18, 1996, Contact: Bob Golden (702) 295–4652.

EIS No. 960488, Draft Supplement, NOA, Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico, US Waters, Amendment 9 concerning Reduction of Unwanted Bycatch of Juvenile Red Snapper with Ancillary Benefits to Other Finfish Species, Implementation, MXG, Due: December 2, 1996, Contact: Wayne E. Swingle (813) 228–2815.

EIS No. 960489, Final EIS, FEM, GA, Albany Flood Recovery Activities, Replacement of Damaged Public Schools, Housing and Businesses, Albany and Dougherty Counties, GA, Due: November 18, 1996, Contact: Todd Davison (404) 853–4401.

EIS No. 960490, Draft EIS, BLM, UT, Price Coalbed Methane Gas Resources Project, Construction, Federal and Non-Federal Lands, Permit-to-Drill Applications, Right-of-Way Grants and COE Section 404 Permits, Carbon and Emery Counties, UT, Due: December 2, 1996, Contact: Dary Trotter (801) 259–6111.

EIS No. 960491, Final EIS, USA, AR, Disposal of Chemical Agents and Munitions Stored at Pine Bluff Arsenal, Construction and Operation, Approval of Permits, Jefferson County, AR, Due: November 18, 1996, Contact: Trent Motley (800) 488–0648.

EIS No. 960492, Final EIS, COE, LA, Estelle Plantation Partnership Municipal Golf Course and Housing Development, Implementation, Jefferson Parish, LA, Due: November 18, 1996, Contact: Bob Martinson (504) 862–2582.

EIS No. 960493, Final EIS, FHW, MI, M–84 Reconstruction Transportation Project, Titabawassee Road and Euclid Avenue, Funding, COE Section 10 and 404 Permits, Bay City, Bay and Saginaw Counties, MI, Due: November 18, 1996, Contact: J.A. Kirschensteiner (517) 377–1880.

EIS No. 960494, Draft EIS, AFS, ID, Middle Fork Analysis Area Management Plan, Implementation, Nez Perce National Forest, Selway Ranger District, Idaho County, ID, Due: December 2, 1996, Contact: Jerome A. Bird (208) 926–4258.

Amended Notices

EIS No. 960441, Final EIS, FHW, UT, US 89 Corridor Transportation Improvements, I–15/Farmington to Harrison Boulevard/South Ogden, Funding, COE Section 404 and NPDES Permits, Davis and Weber Counties, UT, Due: October 28, 1996, Contact: William R. Gedris (801) 399–5921. Published FR 09–27–96 Correction to EIS Title and Telephone Number for Contact Person.

Dated: October 15, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–26819 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5474–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 30, 1996 Through

October 4, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–FHW–C40138–NY Rating LO, NY–17 Highway Conversion from a Partial to a Full Access Control Facility, Five-Mile Point to Occanum and NY–17 Rehabilitation or Reconstruction, Funding and COE Section 404 Permit Issuance, Towns of Kirkwood and Windsor, Broome County, NY.

Summary: EPA believed that the proposed project will not result in significant adverse environmental impacts. EPA had no objection to its implementation.

ERP No. D–GSA–C81017–NY Rating EC2, US Brooklyn Court Project, Demolition of the Emanuel Celler Federal Building, Construction of a New Courthouse and Renovation/Adaptive Reuse of the General Post Office at Cadman Plaza East, Kings County, NY.

Summary: EPA expressed environmental concerns about the project's potential impacts to air quality and lead and asbestos abatement activities. Additional information is requested in the final EIS to address these concerns.

ERP No. D-MMS-E02008–00 Rating LO, Central and Western Planing Areas, Gulf of Mexico 1997 Outer Continental Shelf Oil and Gas Sales 166 (March 1997) and 168 (August 1997) Lease Offering, Offshore Marine Environment and coastal counties, Parishes of AL, MS, TX and LA.

Summary: EPA had no objections to the selection of the preferred alternative; however, we would ask that MMS provide commitment in the Record of Decision to incorporate mitigation stipulations on live bottom, topographic features, archaeological resources, and military areas.

Final EISs

ERP No. F–FHW–E40256–AL Southern Bypass and Weatherly Road Extension Project, Hobbs Island Road to I–565 Interchange, Funding and COE Section 404 Permit, City of Huntsville, Madison County, AL.

Summary: EPA expressed environmental concern regarding the impact to wetlands. EPA requested that coordination continues as the mitigation plan is finalized.

ERP No. F–FHW–E40762–AL Montgomery Outer Loop Construction, US 80 southwest of Montgomery to I–85 east of Montgomery, Funding and COE Section 404 Permit Issuance, Montgomery County, AL.

Summary: EPA expressed environmental concerns about the loss of wetland and forest resources. EPA requested that coordination continue as the mitigation plan is finalized.

ERP No. F–FHW–G40141–OK Canadian River Bridge Crossing Construction, OK–37 east of Tuttle northward to OK–152 in or near Mustang, Funding, COE Section 404 and EPA NPDES Permits Issuance, Canadian and Grady Counties, OK.

Summary: EPA had no objection to the selection of the preferred plan of action and has no other comment to offer.

ERP No. F–NPS–K65180–CA Lava Beds National Monument, General Management Plan, Implementation, Siskiyou and Modoc Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–USN–A11073–00 United States Navy Shipboard Solid Waste Disposal, Implementation, MARPOL Special Areas: Designation Baltic Sea, North Sea, Wilder Caribbean, Antarctic Ocean, Mediterranean Sea, Black Sea and Red Sea, Gulfs Region: Persian Gulf and Gulf of Oman.

Summary: EPA continued to have environmental concerns with allowing waste disposal in the Antarctic Ocean in view of the Protocol on Environmental Protection to the Antarctic Treaty, recently ratified by the United States. EPA also questioned allowing disposal in the Baltic and North Seas, urged the Navy to restrict discharges near sensitive ecosystems and recommend research designed to assure full Navy compliance with MARPOL Annex V.

ERP No. F–USN–K11069–CA Port Hueneme Naval Civil Engineering Laboratory (NCEL) Disposal and Reuse, Implementation, Ventura County, CA.

Summary: The Final EIS responds to our concerns, which involved air quality and NEPA issues, therefore EPA had no objection to the proposed action.

Dated: October 15, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–26820 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5637–6]

National Advisory Council for Environmental Policy and Technology—Total Maximum Daily Load Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three-day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

DATES: The three-day public meeting will be held on Tuesday, November 19, 1996, Wednesday, November 20, 1996, and Thursday, November 21, 1996 beginning at 8:30 a.m. each day. The meeting is scheduled to adjourn at 5:30 p.m. on November 19 and 20, and at 2:30 p.m. on November 21.

ADDRESSES: The meeting will be held at the Hilton Washington Dulles Airport, 13869 Park Center Road, Herndon, Virginia.

Materials, or written comments, may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Official, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Corinne S. Wellish, Designated Federal Official for the Total Maximum Daily Load Committee at 202–260–0740.

Dated: October 10, 1996.

Corinne S. Wellish,

Designated Federal Official.

[FR Doc. 96–26815 Filed 10–17–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00453; FRL–5571–5]

Food Safety Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 9(c) of the Federal Advisory Committee Act (Public Law 92–463), EPA's Office of Pesticide Programs (OPP) is giving notice of the second meeting of the Food Safety Advisory Committee (FSAC).

DATES: This meeting will take place October 22–23, 1996.

ADDRESSES: The meeting will be held at: The Washington Marriott, 1221, 22nd St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Federal Officer or Carol Peterson, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7090; e-mail: Peterson.Carol@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Food Quality Protection Act (FQPA), signed into law on August 3, 1996, (Public Law 104–170) amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide greater protection for U.S. consumers, particularly infants and children.

EPA formed the FSAC as a subcommittee under the auspicies of the National Advisory Council for Environmental Policy and Technology (NACEPT) to provide a structured environment for exchange of information and ideas on regulatory, policy, and implementation issues. These discussions will assist EPA in the implementation of the new food safety statute and are essential if EPA is to be responsive to the needs of the public and the affected industry.

II. Participation

The FSAC is composed of a balanced group of participants from the following sectors: pesticide user and commodity groups; environmental/public interest groups, including the general public; federal and state governments; academia; industry; the public health community; and congressional offices. FSAC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement can do so before or after an FSAC meeting. These statements will become part of the permanent file and will be provided to FSAC members for their information.

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

III. Meeting Schedule

The topics to be discussed are at this meeting are: Consideration of pesticide benefits under FQPA; reduced risk, Integrated Pest Management (IPM), and Pollution Prevention; minor use pesticide issues; communication and right-to-know requirements; and human health risk issues associated with exposure from various pesticide products that have a common mode of action, as well as aggregate exposure to pesticides (e.g., dietary, drinking water, swimming pools; residential aggregate exposure including dietary, drinking water, in the home, lawns, gardens and recreational areas).

A third meeting is now planned for November 14–15, 1996. Meeting location and agenda topics will be published prior to the meeting. To receive an agenda for this (Oct 22–23) meeting please write or call one of the people listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection.

Dated: October 15, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–26916 Filed 10–17–96; 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 Part 1320 Authority, Comments Requested

October 11, 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 part 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before December 17, 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., NW., 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 Number: 3060–0176

Title: Section 73.1510, Experimental authorizations

Form Number: None

Type of Review: Extension

Respondents: Business or other for-profit

Number of Respondents: 30

Estimated time per response: 15 minutes (respondent time)—5 hours (consulting engineer)

Total annual burden: 8 hours

Needs and Uses: Section 73.1510 requires that a licensee of an AM, FM and TV broadcast station file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation. The data is used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation will not cause interference to other stations.

OMB Number: 3060–0178

Title: Section 73.1560 Operating Power and Mode Tolerance

Form Number: None

Type of Review: Extension

Respondents: Business or other for-profit

Number of Respondents: 273

Estimated time per response: 1 hour

Total annual burden: 273 hours

Needs and Uses: Section 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC in Washington, D.C. when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30 day period, an informal written request must be made for any additional time as may be necessary to restore normal operations.

The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

OMB Number: 3060–0181

Title: Section 73.1615, Operation during modification of facilities

Form Number: None

Type of Review: Extension

Respondents: Business or other for-profit

Number of Respondents: 113

Estimated time per response: 10 minutes—1 hour

Total annual burden: 61 hours

Needs and Uses: Section 73.1615 requires notification to the FCC by a licensee of an AM, FM or TV station when it is in the process of modifying existing facilities as authorized by a construction permit and it becomes necessary to either discontinue operation or to operate with temporary facilities. If such licensee needs to discontinue operations or operate with temporary facilities for more than 30 days, then an informal letter request must be sent to the FCC prior to the 30th day. The data is used by FCC staff to maintain complete technical records and to ensure that interference will not be caused to other licensed broadcast facilities.

OMB Number: 3060–0465

Title: Section 74.985 Signal Booster Stations

Form Number: None

Type of Review: Extension

Respondents: Business or other for-profit, non-profit institutions

Number of Respondents: 20

Estimated time per response: 30 minutes—1 hour per response

Total annual burden: 15 hours

Needs and Uses: Section 74.985 requires signal booster stations to obtain written consent from the licensee of the MDS, MMDS or ITFS station to be retransmitted and requires low power signal booster station to submit a certification statement within 48 hours of installation of a booster station demonstrating compliance with Section 74.985(g). The data are used by FCC staff to ensure consent to retransmit signal has been obtained and to ensure that low power booster would not cause interference.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–26752 Filed 10–17–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 52032, October 8, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., October 9, 1996.

CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meetings: Amendment to the Community Support Regulation.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–26851 Filed 10–15–96; 4:19 pm]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Salinas International Freight Co., 8901 Sovereign Row, Dallas, TX 75247–4640

Officers: Gilbert Raymond Khoury, President; Francesca Johanna Johnson, Vice President

Airport Clearance Service, Inc., 55 Inip Drive, Inwood, NY 11096

Officers: Darren S. Schulman, President; Robert Imbriani, Vice President

Dated: October 11, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–26723 Filed 10–17–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-25753) published on pages 52794 and 52795 of the issue for Tuesday, October 8, 1996.

Under the Federal Reserve Bank of Dallas heading, the entry for Paul A. Rowntree, Bedford, Texas, is revised to read as follows:

1. Paul A. and Beverly Rowntree, Bedford, Texas; to acquire an additional 37.59 percent, for a total of 37.87 percent, of the voting shares of Mid-Cities Bancshares, Hurst, Texas, and thereby indirectly acquire Mid-Cities National Bank, Hurst, Texas.

Comments on this application must be received by October 22, 1996.

Board of Governors of the Federal Reserve System, October 11, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–26758 Filed 10–17–96; 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 November 12, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. TeamBanc, Inc., Employee Stock Ownership Plan, TeamBanc, Inc., and TeamBanc Acquisition Subsidiary, Inc. all of Paola, Kansas; to acquire 100 percent of the voting shares of Crown Bancshares, Inc., Bellevue, Nebraska, and thereby indirectly acquire First United Bank of Bellevue, Bellevue, Nebraska.

In connection with this application, TeamBank Acquisition Subsidiary, Inc., also has applied to become a bank holding company.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F & M Bancorporation, Inc., Kaukauna, Wisconsin; to merge with East Troy Bancshares, Inc., East Troy, Wisconsin, and thereby indirectly acquire State Bank of East Troy, East Troy, Michigan.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Coastal Bend Bancshares, Inc., Alice, Texas, and Buckeye Bancshares, Inc., Dover, Delaware; to become a bank holding companies by acquiring 100 percent of the voting shares of First Community Bank, N.A., Alice, Texas.

Board of Governors of the Federal Reserve System, October 11, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26760 Filed 10–17–96; 8:45 am]

BILLING CODE 6210–01–F

Royal Bank of Canada, et al.; Notices to Engage in Certain Nonbanking Activities

Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045; Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690; and Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480.

1. Royal Bank of Canada, Montreal, Canada; Norwest Corporation, Minneapolis, Minnesota; Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN AMRO Holding, ABN AMRO Holding N.V., and ABN AMRO Bank N.V., all of Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois (collectively, Notificants), have applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (BHC Act) (12 U.S.C. 1843(c)(8)) to engage *de novo* in data processing and data transmission activities in conformance with Regulation Y. *See* 12 CFR 225.25(b)(7). Notificants also propose to engage in activities that they maintain are incidental to permissible data processing and data transmission activities. *See* 12 CFR 225.21(a)(2).

Notificants propose to acquire more than 5 percent of the voting shares of Integrion Financial Network, L.L.C. (Company), a *de novo* limited liability company. Other investors in Company would include national banks, a savings and loan holding company and a subsidiary of International Business Machines Corporation. Company would engage in the design, development, operation and maintenance of a computer software and data transmission system (Gateway) that would permit customers of banks and other financial service companies (Financial Service Providers) to communicate electronically with their Financial Service Providers. The Gateway would serve as the electronic interface between the communications device used by the customer (such as a personal computer or telephone) and the Financial Service Provider, thereby providing customers access to the home banking or other electronic products or services offered by the Financial Service Provider. The Gateway also would permit customers to gain electronic access to the Internet, and other on-line financial or nonfinancial data bases or services that are maintained or provided by persons other than Financial Service Providers. The proposed activities, which are described in further detail in the notices, would be conducted throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Board previously has determined that certain data processing and data transmission services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, so long as the data to be processed or furnished are financial, banking, or economic in nature, and certain other conditions are met. *See* 12 CFR 225.25(b)(7). Notificants contend that all of the proposed activities will be conducted in conformance with the Board's Regulation Y, or are activities that are incidental to permissible activities.

In determining whether the proposal satisfies the proper incident standard of section 4(c)(8) of the BHC Act, the Board must consider whether consummation

of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' 12 U.S.C. 1843(c)(8). Notificants contend that consummation of the proposal will increase competition in the market for home banking and other electronic financial services, and will not result in any adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notices and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. The notices are available for immediate inspection at the Federal Reserve Banks indicated above and at the offices of the Board of Governors. Any request for a hearing on the notices must be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these notices must be received at the Reserve Banks indicated above or the offices of the Board of Governors not later than October 31, 1996.

Board of Governors of the Federal Reserve System, October 11, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26759 Filed 10–17–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bancommunity Services Corporation and Security Shares, Inc., both of St. Peter, Minnesota; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of The Board's Regulation Y.

2. MidAmerica Bancshares, Inc., St. Paul, Minnesota; to engage *de novo* through its subsidiary, MidAmerica Financial, St. Paul, Minnesota, in making, acquiring and servicing loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y; and in leasing personal and real property, pursuant to § 225.25(b)(5)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 11, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26757 Filed 10–17–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, October 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: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interim amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) and request for public comment on the definition of ''well-capitalized'' for bank holding companies.

2. Any items carried forward from a previously announced meeting.

Discussion Agenda: Please note that no discussion items are scheduled for this meeting.

Note: If the item is moved from the Summary Agenda to the Discussion Agenda, discussion of the item will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–26896 Filed 10–16–96; 11:32 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:15 a.m., Wednesday, October 23, 1996,

following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst 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: October 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–26897 Filed 10–16–96; 11:32 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The program has been extended for an additional one-year period by the Omnibus Consolidated Appropriations Act (Public Law 104–208). The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from July 1, 1995 to June 30, 1996. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after October 1, 1996.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collection with an estimated value of $25,000 or less will be reserved for emergency small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds $25,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Services in Groups 15, 16, and 17

Procurements for all construction services (except solicitions issued by GSA contracting activities in Regions 2, 3, 6, and 9 in SIC Group 15 and Regions 2, 3, 5, 6, 7, and 9 in individual SIC code 1796) shall be conducted on an unrestricted basis.

Procurements for construction services in SIC Group 15 issued by GSA contracting activities in Regions 2, 3, 6, and 9, and individual SIC code 1796 in Regions 2, 3, 5, 6, 7, and 9, shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 6 encompasses the states of Iowa, Kansas, Missouri and Nebraska.

Region 7 encompasses the states of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Trash/Garbage Collection Services in PSC S205.

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 3, 4, 5, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by contracting activities in Regions 3, 4, 5, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements may be conducted on an unrestricted basis.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia,

Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, and Loudoun, and Prince William in Virginia.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: October 9, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96–26825 Filed 10–17–96; 8:45 am]

BILLING CODE 6829–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Recordkeeping Requirements for Government Owned/Contractor Held Property and Report of Accounting Personal Property (HHS–565)—0990–0015—Extension—The recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. Form 565 is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS. *Respondents:* state or local governments, business or other for-profit, non-profit institutions, small business; *Burden Information for Form HHS–565: Annual Number of Respondents:* 3,600; *Annual Frequency of Response:* one time; *Average Burden per Response:* 30 minutes; *Total Annual Burden:* 1,800 hours. *Burden Information for Recordkeeping Requirements: Annual Number of Responses:* 4,500; *Average Burden per Response:* 30 minutes; *Total Annual Burden:* 2250 hours. *Total Burden:* 4050 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: October 11, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–26809 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

Senior Executive Service; Performance Review Board Membership

Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the Federal Register.

Dated: October 10, 1996.

Eugene Kinlow,

Deputy Assistant Secretary for Human Resources.

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Office of the Secretary and the Administration on Aging: Beverly Dennis III, Anna L. Durand, Eugene Kinlow, Edwin M. Sullivan, Edwin L. Walker, and Jacquelyn Y. White.

[FR Doc. 96–26701 Filed 10–17–96; 8:45 am]

BILLING CODE 4150–04–M

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Friday, October 25, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Hotel Washington, 15th & Pennsylvania Avenue, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594–1321.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6665 no later than October 22.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to AHCPR activities to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are:

Richard E. Behrman, M.D., J.D.; Helen Darling, M.A.; Nancy Wilson Dickey, M.D.; Jose Julio Escarce, M.D., Ph.D.; Ada Sue Hinshaw, Ph.D., R.N.; Sharon C. Keily, M.D.; Jeffrey P. Koplan, M.D., M.P.H.; Robert M. Krughoff, J.D.; W. David Leak, M.D.; Harold S. Luft, Ph.D.; Woodrow A. Myers, Jr., M.D., M.B.A.; Martin Paris, M.D., M.P.H.; E. Walter J. McNerney, M.H.A.; Edward B. Perrin, Ph.D.; Stephen M. Shortell, Ph.D.; and W. Leigh Thompson, M.D., Ph.D.

There also are Federal ex-officio members. These members are:

Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Friday, October 25, 1996, the meeting will begin at 9:00 a.m. with the call to order by the Council Chairman. The Administrator, AHCPR, will update the status of current Agency issues and program initiatives. Council discussion will follow.

The meeting will adjourn at 4:00 p.m. Agenda items are subject to change as priorities dictate.

Dated: October 15, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–26923 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–90–M

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting.

Name: Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry (BSC, ATSDR).

Times and Dates: 8:30 a.m.–5:30 p.m., November 14, 1996. 8:30 a.m.–2:15 p.m., November 15, 1996.

Place: The ATSDR Training Room, Building 35, 35 Executive Park Drive, NE, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports, and program areas to emphasize and/or to de-emphasize.

Matters to be Discussed: Agenda items will include an update on the ATSDR Community/Tribal Forum and will also focus on other issues of concern to ATSDR including: 1) the ATSDR Peer Review Policy and Procedures; 2) external perspectives from chemical manufacturers, grantees, universities, states, and communities; 3) the ATSDR Site-Specific Evaluation Initiative; and 4) the ATSDR Child Health Initiative.

Written comments are welcome and should be received by the contact person listed below prior to the meeting.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: October 11, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–26749 Filed 10–17–96; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Notice of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Laboratory Evaluation of Back Support Belts.

Time and Date: 1 p.m.–4 p.m., November 4, 1996.

Place: Suncrest Facility, Large Conference Room, NIOSH, CDC, 3040 University Avenue, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: Participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the study protocol ''Laboratory Evaluation of Back Support Belts,'' being conducted at NIOSH. Peer review panelists will review the study protocol and provide individual advice on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other governmental agencies, and the public are invited.

Contact Person for Additional Information: Hongwei Hsiao, Ph.D., NIOSH, CDC, M/S P119, 3040 University Avenue, West Virginia 26505, telephone 304/285–5981.

Dated: October 11, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–26748 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–19–M

CDC Advisory Committee on HIV and STD Prevention 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 committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Times and Dates: 9 a.m.–5 p.m., November 12, 1996. 9 a.m.–1 p.m., November 13, 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 will accommodate approximately 100 people.

Purpose: This committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters to be Discussed: Agenda items will include an overview of HIV and STD divisions and the Prevention Services Office; updates on prevention activities related to injecting drug users and persons in correctional facilities, partner notification, lesbian HIV issues, HIV counseling and testing, syphilis elimination, behavioral research and managed care; surveillance on unusual variants of HIV; and an evaluation plan for HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Management Specialist, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone (404) 639–8029.

Dated: October 11, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–26747 Filed 10–17–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96N–0327]

Use of Formalin Solution on All Finfish; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data, human food safety data, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for control of certain external protozoa and monogenetic trematodes on all finfish and certain fungi on the eggs of all finfish through water treatment with formalin solution. The data, contained in Public Master File (PMF) 5228, were compiled under National Research Support Project No. 7 (NRSP–7), a national agricultural program for obtaining clearances for use of new drugs in minor animal species or in any animal species for the control of diseases that occur infrequently or in limited geographical areas.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document

Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–3125.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1659.

SUPPLEMENTARY INFORMATION: The use of formalin solution on finfish is a new animal drug use under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, formalin solution is subject to section 512 of the act (21 U.S.C. 360b), which requires that its use on finfish be the subject of an approved NADA or supplemental NADA. Finfish are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

Formalin solution is currently approved for control of: (1) Certain external, protozoan parasites and monogenetic trematodes on salmon, trout, catfish, largemouth bass, and bluegill; and (2) fungi of the family Saprolegniaceae on salmon, trout, and esocid eggs in accordance with 21 CFR 529.1030. The NRSP–7 Project, Southern and Western Regions (University of Florida, Gainesville, Florida and University of California, Davis, California), has filed data and information that demonstrate safety and effectiveness to all other finfish when they are administered formalin solution for the above mentioned conditions of use. NRSP–7 has also filed human food safety data and an environmental assessment (EA), amended by the Center for Veterinary Medicine, that adequately addresses the potential impacts due to the expanded use of the drug product. Approval of an application based on the data and information in this file requires additional information concerning the potential environmental impact of the manufacturing process. The abbreviated EA will be displayed when the NADA is approved, so that the manufacturing site environmental impact can be included in the assessment. The EA filed by NRSP–7 may be seen at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The data and information are contained in PMF 5228. Sponsors of NADA's or supplemental NADA's may, without further authorization, refer to the PMF to support approval of an application filed under § 514.1(d) (21 CFR 514.1(d)). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other data needed for approval, such as manufacturing methods, facilities, and controls, and information addressing the potential environmental impacts (including occupational) of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Naba K. Das (address above).

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and 21 CFR 514.11(e)(2)(ii), a summary of target animal safety, effectiveness, and human safety data and information provided in this PMF to support approval of an application may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 7, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–26682 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0255]

CareLink Corp.; Premarket Approval of CareFone™ Home Uterine Activity Monitoring System, Model 2001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CareLink Corp., Santa Ana, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of CareFone™ Home Uterine Activity Monitoring System, Model 2001. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by November 18, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: On December 23, 1991, CareLink Corp., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of CareFone™ Home Uterine Activity Monitoring System, Model 2001. The device is a home uterine activity monitor and is indicated for use in conjunction with standard high risk care, for the daily at-home measurement of uterine activity in pregnancies ≥ 24 weeks gestation for women with previous preterm delivery. Uterine activity data are displayed at a remote location to aid in the early detection of preterm labor.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition,

FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 18, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 4, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–26683 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the National Mammography Quality Assurance Advisory Committee, which is scheduled for October 21, 22, and 23, 1996. This meeting was announced in the Federal Register of September 24, 1996 (61 FR 50031 at 50033). The amendment is being made to add a closed session to the agenda scheduled for October 23, 1996. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 24, 1996, FDA announced that a meeting of the National Mammography Quality Assurance Advisory Committee would be held on October 21, 22, and 23, 1996.

On page 50033, in the first column, the ''*Type of meeting and contact person*'' portion is amended as follows:

Type of meeting and contact person. Open public hearing, October 21, 1996, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, October 22, 1996, 9 a.m. to 5 p.m.; open committee discussion, October 23, 1996, 8 a.m. to 10 a.m.; closed committee deliberations, 10 a.m. to 10:30 a.m.; open committee discussion, 10:30 a.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397.

On page 50033, in the second column, in addition to the open committee discussion of the request of the American Board of Certification in Radiology to be designated as eligible to certify interpreting physicians under the Mammography Quality Standards Act (the MQSA), a ''*Closed committee deliberations*'' portion is added as follows:

Closed committee deliberations. On October 23, 1996, the committee will discuss confidential commercial information submitted in connection with the request of the American Board of Certification in Radiology to be designated as eligible to certify interpreting physicians under the MQSA. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act

(FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: October 15, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–26915 Filed 10–16–96; 12:37 pm]

BILLING CODE 4160–01–F

[Docket No. 95S–0181]

Mutual Recognition Agreement (MRA); Public Meeting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting and availability of draft document.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of International Affairs; Office of Policy; Office of Operations, Office of Regulatory Affairs; and the Centers for Biologics Evaluation and Research, Drug Evaluation and Research, and Veterinary Medicine) is announcing a public meeting to provide information about discussions with the European Union (EU) related to a possible agreement to exchange inspectional information on good manufacturing practices and quality controls for human biologicals and human and animal drugs. At a meeting held on March 31, 1995, FDA committed to keeping the public informed about the progress of these negotiations and to receiving comments on FDA's proposal for an MRA. FDA is also announcing the availability of the document entitled ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals.''

DATES: The public meeting will be held on Wednesday, October 30, 1996, from 9 a.m. to 1 p.m. Those persons interested in attending this meeting must fax their registration, including name(s), firm/organization name, address, and telephone and fax number by October 25, 1996, to Nathaniel L. Geary (address below). Those persons interested in making a presentation at this meeting must contact Nathaniel L. Geary (address below) by October 25, 1996. There is no registration fee for this meeting, but advance registration is required. Space is limited and all interested parties are encouraged to register early. Written comments may be submitted at any time.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., conference room E, 5600 Fishers Lane, Rockville, MD 20857.

Submit written requests for single copies of ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals'' to Walter M. Batts or Merton V. Smith (address below). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals'' to Merton V. Smith (address below). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of ''FDA Proposal for an Agreement with the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals'' and received comments may be seen at the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For information regarding registration: Nathaniel L. Geary, Industry and Small Business Liaison Staff (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3375, FAX 301–443–5153.

For information regarding comments: Walter M. Batts or Merton V. Smith, Office of International Affairs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480, FAX 301–443–0235.

SUPPLEMENTARY INFORMATION: Joint discussions between the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and the FDA with the EU, were disclosed in a public meeting held in Washington, DC on March 31, 1995. FDA is interested in the views of industry and other interested parties on its approach to negotiating an MRA with the EU. It would be useful for FDA to receive comments on the following issues: What effect will such an agreement have upon importation and exportation of those drug and biological products which would be covered by an MRA? What effect on product safety or other product-related matters, if any, do industry and other interested parties perceive to result from entering into an MRA?

Interested persons may submit written comments on ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals'' to Merton V. Smith (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of ''FDA Proposal for an Agreement With the European Union Concerning the Mutual Recognition of Inspections to Determine Adherence to Good Manufacturing Practices for Pharmaceuticals Including Biologicals'' and received comments may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m.

Dated: October 16, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–26914 Filed 10–17–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Eye Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 9 and 10, 1996 in Building 31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 9 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, National Eye Institute (NEI), on matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 9 from approximately 4 p.m. until recess and on December 10 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Retinal Cell and Molecular Biology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marie Watkins, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Watkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health)

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26690 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; 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 meeting 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 24, 1996.

Time: 1 p.m.

Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 11, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26689 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, November 18–19, 1996, Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

The meeting will be open to the public from 8:30 a.m. to 5:00 p.m. on November 18 and 8:30 a.m. to adjournment on November 19. Attendance by the public will be limited to space available. Board topics will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on program activities of the Center; (3) a discussion of general priority areas of research for the Center; (4) a discussion of support for medical rehabilitation research by government agencies; and (5) development of a conference to define the structure for clinical trials in medical rehabilitation.

Ms. Debbie Welty, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Welty.

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26691 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; 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 meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 6, 1996.

Time: 8:00 a.m.

Place: Federal Building, Conference Room 6B08 7550 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Katherine Woodbury-Harris, Scientific Review Administrator National Institutes of Health, 7550 Wisconsin

Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate 20 contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26692 Filed 10–17–96; 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 16, 1996.

Time: 9:15 a.m.

Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: October 31, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

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.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26693 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; 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 meeting:

Name of Committee: National Institute on Deafness and Other Communication, Disorders Special Emphasis Panel.

Date: November 8, 1996.

Time: 8:00 a.m.–5:00 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville MD 20852.

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate Small Grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussion 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.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26695 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; 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 Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Paternal Exposure Assessment for Reproductive Studies, (Telephone Conference Call).

Date: October 21, 1996.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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.

(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: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26696 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, November 18–19, 1996, Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. on November 18 to adjournment on November 19. The meeting will include, among other topics, a discussion of some recent experiences and experiments in streamlining the peer review system. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Rockledge 2 Building, Suite 3016, National Institutes of Health, Bethesda, Maryland 20892–7778, telephone (301) 435–1124, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Rockledge 2 Building, Suite

3176, National Institutes of Health, Bethesda, Maryland 20892–7762, phone (301) 435–0691, will provide substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary at least two weeks in advance of the meeting.

Dated: October 9, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26688 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: November 4–5, 1996.

Time: 8:00 a.m.

Place: George Washington University Inn, Washington, DC.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Chemistry and Related Sciences.

Date: November 13, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4156, Telephone Conference.

Contact Person: Dr. Ronald DuBois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Name of SEP: Chemistry and Related Sciences.

Date: November 18. 1996.

Time: 8:30 a.m.

Place: Hyatt Arlington, Arlington, VA.

Contact Person: Dr. Alex Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435–1740.

Name of SEP: Multidisciplinary Sciences.

Date: November 20, 1996.

Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 5114, Telephone Conference.

Contact Person: Dr. Gerald Becker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5114, Bethesda, Maryland 20892, (301) 435–1750.

Name of SEP: Chemistry and Related Sciences.

Date: November 21, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4154, Telephone Conference.

Contact Person: Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

Name of SEP: Chemistry and Related Sciences.

Date: November 21–23, 1996.

Time: 8:00 p.m.

Place: Sheraton University Inn, Philadelphia, PA.

Contact Person: Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

Name of SEP: Clinical Sciences.

Date: November 22, 1996.

Time: 1:00 p.m.

Place: NIH Rockledge 2, Room 4140, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892, (301) 435–1214.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 13, 1996.

Time: 9:00 a.m.

Place: Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 22, 1996.

Time: 9:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, Maryland 20892, (301) 435–1219.

Name of SEP: Biological and Physiological Sciences.

Date: November 22, 1996.

Time: 9:00 a.m.

Place: American Inn, Bethesda, MD.

Contact Person: Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

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 indidivudals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 10, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26694 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 42433, August 15, 1996) is amended to reflect organizational changes at the National Institute of General Medical Sciences (NIGMS) (HNS) as follows: (1) Revise the functional statement for the Office of the Director (HNS1); (2) retitle the Office of Research Reports as the Public Information Office (HNS13); and (3) revise the functional statement for the Public Information Office.

Section HNS–B, Organization and Functions is amended as follows: (1) Under the heading *National Institute of General Medical Sciences (HNS),* insert the following:

Office of the Director (HNS1). (1) Plans, directs, and coordinates the development and progress of Institute programs; (2) provides consultative services and research information to other NIH components, Federal and non-Federal organizations, and for guidance of the National Advisory General Medical Sciences Council; (3) directs evaluation of the status of support and accomplishments of Institute program areas; (4) provides internal management, research reports, and administrative services to the Institute; and (5) directs and manages the Institute's Equal Employment Opportunity (EEO) Program.

Public Information Office (HNS13). (1) Communicates the goals and results of NIGMS-supported research and provides information about NIGMS's mission, programs, activities, and initiatives to the general public and specific target audiences, both directly and via intermediaries, such as the news media; (2) advises the Director and other NIGMS staff on communication matters and, as appropriate, assists NIGMS staff in meeting their communication needs; and (3) assures compliance with NIH and Departmental procedures for the review and clearance of public materials, including manuscripts, speeches, and publicly available electronic documents.

Dated: October 7, 1996.

Harold Varmus,

Director, NIH.

[FR Doc. 96–26697 Filed 10–17–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–08]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless. This notice also removes properties at Fort Totten, NY, which were inadvertently published on September 6, 1996, at 61 FR 47113, 47150.

EFFECTIVE DATE: October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week and to correct the notice of September 6, 1996.

Dated: October 11, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Correction: Properties at Fort Totten, New York were recently published inadvertently on September 6, 1996 at 61 FR 47133, 47150.

[FR Doc. 96–26717 Filed 10–17–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1020–00]

Front Range Resource Advisory Council (Colorado); Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next two meetings of the Front Range Resource Advisory Council (Colorado) will be held on November 14, 1996 and January 16, 1997 in Canon City, Colorado.

Both meetings are scheduled to begin at 9 a.m. at the Bureau of Land Management's (BLM) Canon City District Office, 3170 East Main Street, Canon City, Colorado. The agenda on November 14 will include a brief discussion of Rangeland Standard and Guidelines and a discussion about beginning work on recreation guidelines. The meeting January 16 will be a continuation of the topics of the previous meeting.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:15 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meetings are scheduled for Thursday, November 14, 1996 and January 16, 1997 from 9 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 96–26801 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–JB–P

[CO–010–06–1020–00–241A]

Northwest Colorado Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the next meeting of the Northwest Colorado Resource Advisory Council will be held on November 15, 1996.

DATES: The meeting is scheduled for Friday, November 15, 1996 in Kremmling, Colorado.

ADDRESSES: For further information, contact Lynda Boody, Bureau of Land Measurement (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3000; TDD (970) 244–3011.

SUPPLEMENTARY INFORMATION: The meeting is scheduled to begin at 9:00 a.m.

This meeting will be held at the Latigo Ranch, 201 County Road 1911, Kremmling, CO 80459, (970) 724–9008.

The agenda for this meeting will focus on general Council business, issues with which the Council would like to become involved, new business, committee reports, and reports from the Area Managers on local issues.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Public comment will be taken throughout the meeting. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Grand Junction/Craig District Manager.

Summary minutes for the Council meeting will be maintained in the Grand Junction and Craig District Offices and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: October 7, 1996.

Mark Morse,

Grand Junction/Craig District Manager.

[FR Doc. 96–26792 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–70–M

[UT–940–1910–00–4677]

Idaho: Filing of Protraction Diagrams in Idaho

The protraction diagrams of the following described unsurveyed townships, all in Boise Meridian, Idaho, were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. October 7, 1996.

T. 33 N., R. 8 E.; T. 34 N., R. 8 E.; T. 33 N., R. 9 E.; T. 34 N., R. 9 E.; T. 33 N., R. 10 E.; T. 34 N., R. 10 E.; T. 33 N., R. 11 E.; T. 34 N., R. 11 E.; T. 35 N., R. 11 E.; T. 36 N., R. 11 E.; T. 33 N., R. 12 E.; T. 34 N., R. 12 E.; T. 35 N., R. 12 E.; T. 36 N., R. 12 E.; T. 33 N., R. 13 E.; T. 34 N., R. 13 E.; T. 35 N., R. 13 E.; T. 36 N., R. 13 E.; T. 33 N., R. 14 E.; T. 34 N., R. 14 E.; T. 33 N., R. 15 E.; T. 34 N., R. 15 E.; T. 33 N., R. 16 E.; T. 34 N., R. 16 E.

The preparation of these diagrams was requested by the USDA Forest Service, Geometronics Service Center, to support its mapping program.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: October 7, 1996.

Harry K. Smith,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–26795 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–GG–M

[NM–038–1430–00]

Sale of Public Land In Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The BLM announces the following described parcels of public land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value shown. The parcels are isolated, difficult and uneconomical to manage as part of the public land system, and are not suitable for management by another Federal department or agency. The sale is consistent with the BLM's planning efforts, and the public interest will be served by offering this land for sale.

Sale Method

Parcels 1 and 2 will be offered for sale using competitive bidding procedures (43 CFR 2711.3–1) as described below. Parcels 3, 4 and 5 will be offered to the listed parties through direct sale procedures not less than 60 days from publication of this notice (43 CFR 2711.3–3).

PARCEL INFORMATION

[Legal description, NMPM]

Parcel No.	Serial NMNM	Township	Rge.	Sec.	Lot	Acres	Appraised value	Method of sale
1	69950	4S	1E	18	21	5.78	$5,780	Competitive.
2	69955	4S	1E	33	17	17.20	8,600	Competitive.
3	66330	2S	1E	31	11	2.76	6,900	Direct to Connie Gonzales, et al.
4	75579	5S	1E	4	40	16.92	1,690	Direct to Cleto Vasquez.
5	75580	5S	1E	4	41	16.93	1,690	Direct to Esquipula Vigil, Jr.

Competitive Bidding Procedures

The sale of Parcels 1 and 2 will be by competitive sealed bids followed by oral bidding. Sealed bids will be accepted in the Socorro Resource Area Office, 198 Neel Avenue, NW, Socorro, New Mexico 87801, until 10 a.m. on January 15, 1997, the day of the sale. Oral bids will be accepted commencing at 10:15 a.m. following the opening of all sealed bids, at the same place on the same sale date. Sealed bids of less than the appraised fair market value will be rejected. The apparent highest qualified sealed bid will be publicly declared by the Authorized Officer. The apparent highest qualified sealed bid will then become the starting point for the oral bidding. If no apparent qualified sealed bids are received, the oral bidding will start at the appraised fair market value.

In the absence of oral bids, the apparent highest qualified sealed bid will establish the sale price for that parcel. In the event that two or more sealed bids are received containing valid bids of the same amount for the same parcel, and no higher oral bid is received for that parcel, the determination of which is to be considered the highest designated bid will be by supplemental bidding. In such a case, the high bidders will be allowed to submit oral or sealed bids as designated by the Authorized Officer. After oral bids are received, the highest qualifying bid, whether sealed or oral, shall be declared by the Authorized Officer.

Bidders must be 18 years of age or over and United States citizens, and corporations must be subject to the laws of any state or the United States. Apparent high bidders must submit proof of these requirements within 15 days after the sale date. Bids must be made by the principal or his duly qualified agent. Each sealed bid must be written or typed and accompanied by postal money order, bank draft, or cashier's check made payable to the Department of Interior, Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount of the bid. The sealed bid envelope containing the bid and the required amount must be marked in the lower left-hand corner as follows:

Public Sale Bid Parcel No. _____

Serial No. _____

Sale Date _____

Date of Bid Submission _____

Each successful oral bidder will be required to pay not less than 20 percent of the amount of the bid immediately following the sale. Payment must be by cash, personal check, bank draft, money order, or any combination of these. Successful bidders, whether such bid is oral or sealed, will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. Failure to submit the full sale price within the above specified time limit will result in cancellation of the sale of the specific parcel and the deposit will be forfeited and disposed as other receipts of sale. All sealed bids will be either returned, accepted, or rejected within 30 days of the sale date.

In the event that the Authorized Officer rejects the highest qualified bid for any of the above parcels, or releases

the bidder from it, the Authorized Officer shall determine whether the public land shall be withdrawn from the market or reoffered.

Unsold Parcels

If parcels 1 or 2 are unsold on January 15, 1997, they will be reoffered by competitive bidding procedures in a second sale to be held February 20, 1997.

If parcels 3, 4, or 5 are unsold to the listed parties by close of business February 7, 1997, they will be offered by competitive bidding on the second sale date of February 20, 1997.

Competitive bidding procedures for unsold parcels will be as described above. Sealed bids for unsold parcels will be accepted until 10:00 a.m. on February 20, 1997, followed by oral bidding commencing at 10:15 a.m. after opening of all sealed bids.

Terms and Conditions

Terms and conditions applicable to the sale are:

1. The patents or conveyance documents, when and if issued, will contain a reservation to the United States for ditches and canals.

2. All minerals will be reserved to the United States together with the right to prospect for, mine, and remove the minerals.

3. All patents or conveyance documents will be issued subject to existing access road rights-of-way and easements.

4. On parcels 3, 4, and 5, the lands lie within a 100-year floodplain and the patents or conveyance documents will contain land use restrictions as required by Executive Order 11988.

5. On parcels 4 and 5, the lands lie within a wetland area and the patent will contain wetland restrictions in accordance with Solicitor's opinion BLM SA 0057.

6. On parcel 1, the patent will be issued subject to those rights for waterline, access road and water berm purposes as have been granted to Calvin and Liz Cryer and Joe and Laura Lopez by right-of-way NMNM 83794.

7. On parcels 2, 3, 4, and 5, the purchasers of the land will acquire the property realizing that legal access to the property is lacking.

DATES: Interested parties may submit comments regarding the proposed action to the Socorro Resource Area Manager by December 2, 1996.

ADDRESSES: Comments should be sent to the BLM, Socorro Resource Area Office, 198 Neel Avenue, NW, Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Chella Herrera or Jon Hertz at (505) 835–0412.

SUPPLEMENTARY INFORMATION: Additional information concerning the land, terms and conditions of sale, and bidding instructions may be obtained from the Socorro Resource Area Office.

Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Upon publication in the Federal Register, the lands described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the Federal Register of a termination of the segregation, or 270 days from the date of publication, whichever occurs first. The BLM may accept or reject any offer to purchase or withdraw any tract from sale if the Authorized Officer determines that consummation of the sale would not be fully consistent with FLPMA or another applicable law.

Dated: October 10,1996.

Linda S.C. Rundell,

Las Cruces District Manager.

[FR Doc. 96–26703 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–VC–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2135 Butano Drive, Sacramento, CA 95825–0451, (916) 979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Humboldt Meridian, California

T. 10 N., R. 8 E.,—Dependent resurvey, (Group 1215) accepted September 24, 1996, to meet certain administrative needs of the US Forest Service, Klamath National Forest.

Mount Diablo Meridian, California

T. 1 S., R. 15 E.,—Supplemental plat of the S ½ of section 7, accepted September 3, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 16 S., R. 38 E.,—Dependent resurvey and subdivision of section 31, (Group 1170) accepted September 6, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Folsom Resource Area.

T. 45 N., 8 W.,—Dependent resurvey, (Group 1194) accepted September 13, 1996, to meet certain administrative needs of the US Forest Service, Klamath National Forest.

T. 22 S., R. 45 E.,—Dependent resurvey of mineral surveys, (Group 1148) accepted August 18, 1996, to meet certain administrative needs of the BLM, California Desert District, Ridgecrest Resource Area.

San Bernardino Meridian, California

T. 1 N., R. 16 & 17 W.,—Metes-and-bounds survey, (Group 1199) accepted September 13, 1996, to meet certain administrative needs of the National Park Service, Santa Monica Mountains National Recreation Area.

T. 9 N., R. 25 W.,—Dependent resurvey and subdivision of sections 1, 2, 3, 11 and 12, (Group 1048) accepted September 13, 1996, to meet certain administrative needs of the BLM, Bakersfield District, Caliente Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: October 7, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–26797 Filed 10–17–96; 8:45 am]

BILLING CODE 4310–40–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation and will be held from 8:30 a.m. to 5:00 p.m.

DATE: November 12, 1996.

ADDRESS: Park Hyatt San Francisco, 333 Battery Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: October 15, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–26777 Filed 10–17–96; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *AGSCO, Inc. et al.*, Civil Action No. A4–96109, was lodged on September 27, 1996, with the United States District Court for the District of North Dakota, Northwestern Division. The proposed consent decree settles certain claims asserted by the United States, on behalf of the United States Environmental Protection Agency (EPA), under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with respect to the release and/or threatened release of hazardous substances at the Old Minot Landfill Superfund Site (''Site''). The following parties are signatories to the proposed consent decree: (1) AGSCO, Inc.; (2) The Boeing Company; (3) Bridgeman Creameries/Land O'Lakes, Inc.; (4) Farmers Union Elevator Company; (5) Farstad Oil, Inc.; (6) Owl Constructors; (7) Lockheed Martin Corporation; (8) Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.; (9) Flying J Petroleums, Inc, and Flying J Inc.; (10) Bacon Signs, Inc; (11) Cargill, Incorporated; (12) Cummins Diesel Sales, Inc., a Minnesota Corporation; (13) Midland Diesel Service and Engine Company; (14) Minot Farmers Elevator; (15) Norwest Bank North Dakota, N.A.; (16) Porter Bros. Dakota Hide & Fur Co; and (17) Trinity Medical Center, Trinity Hospital and Trinity Nursing Home (hereinafter referred to as ''Settling Defendants'').

The proposed consent decree requires the Settling Defendants to pay the United States $562,250 in reimbursement of certain response costs that the United States has incurred or will incur for response actions at the Site. The City of Minot is implementing the remedial action at the Site under a separate Consent Decree with the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *AGSCO, Inc. et al.*, DOJ Ref. *#90–11–3–1107–A*.

The proposed consent decree may be examined at the Office of the United States Attorney, District of North Dakota, 219 Fed. Bldg. & U.S. Cthse., 655 1st Ave. N., Fargo, North Dakota 58102; the Region VIII Office of the Environmental Protection Agency, 999 18th Street—Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed decree and attachments, please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 96–26798 Filed 10–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that a Consent Decree in *United States* v. *Board of Commissioners for Cecil County, Maryland*, Civil Action No. AMD 96–3082, was lodged with the United States District Court for the District of Maryland on September 30, 1996.

On September 30, 1996, the United States filed a complaint against the Board of Commissioners for Cecil County, Maryland (''Cecil County''), as the owner and operator of the Woodlawn Landfill Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 9607(a). The proposed Consent Decree resolves the alleged liability of Cecil County for response costs incurred and to be incurred by the United States at the Site. The proposed Consent Decree also resolves the alleged liability in contribution of the United States Department of the Navy (''Navy'') for response costs incurred and to be incurred at the Site. Pursuant to the terms of the Decree, Cecil County will pay $4.75 million in response costs, plus interest, over 5 years. The United States on behalf of the Navy will pay $1.25 million in response costs.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Board of Commissioners for Cecil County*, DOJ No. 90–11–2–972.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Pennsylvania, U.S. Courthouse, 8th Floor, 101 West Lombard Street, Baltimore, MD 21201; Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $15.25 for the Decree only or $66.25 for the Decree and all attachments (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–26799 Filed 10–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Settlement Agreement in *In Re Diversified Metals Corporation,* Bankruptcy No. 95–42881–293, was lodged on October 3, 1996 with the United States Bankruptcy Court for the Eastern District of Missouri. The Settlement Agreement allows the United States a claim of $40,000 against the estate of Diversified Metals Corporation and requires payment on that claim be made to reimburse a portion of the United States' past costs associated with the investigation and clean up of the Jack's Creek/Sitkin Smelting Superfund Site (''Site''), located in Mifflin County, Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In Re Diversified Metals Corporation,* DOJ Ref. #90–11–2–911G.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, 1114 Market Street, Room 401, St. Louis, MO 63101; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–26800 Filed 10–17–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; notice to carrier—acknowledgement by carrier of arrival of possible excludable alien.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 17, 1996.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice to Carrier—Acknowledgment by Carrier of Arrival of Possible Excludable Alien.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–295C, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is necessary to notify the agent, master or commanding officer of the vessel or aircraft, if applicable, that the alien passenger may be excludable from the United States and in the event the alien is formally ordered excluded and deported, the carrier will be responsible for detention and transportation expenses to the last foreign port of embarkation as provided in 8 CFR 237.5.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 1 minute per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 935 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 11, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–26750 Filed 10–17–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

October 15, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or

VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395–7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Request for Examination and/or Treatment.

OMB Number: 1215–0066.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 16,500 (8×16,500=132,000 total responses per year).

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 142,560.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Longshore and Harbor Workers' Compensation Act provides benefits to workers injured in maritime employment on navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing or building a vessel. Under Section 702.419 of the Act the employer/insurance carrier is responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS–1 serves two purposes: (1) It authorizes the medical care; and (2) provides a vehicle for the treating physician to report the findings, treatment, given and anticipated physical condition of the employee.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

Frequency: One Time.

Affected Public: Individuals or households.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 3,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The proposed laboratory research will be conducted from FY97–FY99 to enhance data quality in the Bureau of Labor Statistics' surveys. Improvements will be made by examining psychological and cognitive aspects of BLS's data collection procedures, including questionnaire design, interviewing procedures, and administrative technology.

Agency: Employment and Training Administration.

Title: Trade Adjustment Assistance (TAA) Financial.

Status/Request Funds Report.

OMB Number: 1205–0275.

Form Number: ETA 9023.

Affected Public: State or Local Governments.

Activity	Number of reports	Number of respondents	Average time per respondent (hours)
TAA	5	50	2
NAFTA	5	50	2

Total Burden Hours: 1,000.

Description: The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard form 269. The required data are necessary in order to meet statutory requirements prescribed by the Omnibus Trade and Competitiveness Act of 1988, P.L. 100–418, and the North American Free Trade Agreement Implementation Act, P.L. 103–182, in accordance with section 250(a) Subchapter D, Chapter 2, Title II of the Trade Act of 1974.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–26778 Filed 10–17–96; 8:45 am]

BILLING CODE 4510–24–M

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the Federal Register.

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board:

Carol A. Gaudin
Peter Rell
James Henry
Edmundo Gonzales
Meredith Miller

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 11th day of October, 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–26779 Filed 10–17–96; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and

federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA960015 (March 15, 1996)
PA960016 (March 15, 1996)
PA960051 (March 15, 1996)

Volume III

Florida
FL960032 (March 15, 1996)
Kentucky
KY960003 (March 15, 1996)
KY960004 (March 15, 1996)
KY960006 (March 15, 1996)
KY960007 (March 15, 1996)
KY960026 (March 15, 1996)
KY960027 (March 15, 1996)
KY960028 (March 15, 1996)
KY960029 (March 15, 1996)

Volume IV

Illinois
IL960001 (March 15, 1996)
IL960002 (March 15, 1996)
IL960004 (March 15, 1996)
IL960005 (March 15, 1996)
IL960007 (March 15, 1996)
IL960008 (March 15, 1996)
IL960010 (March 15, 1996)
IL960011 (March 15, 1996)
IL960012 (March 15, 1996)
IL960013 (March 15, 1996)
IL960014 (March 15, 1996)
IL960016 (March 15, 1996)
IL960017 (March 15, 1996)
IL960026 (March 15, 1996)
Minnesota
MN960007 (March 15, 1996)
MN960008 (March 15, 1996)
MN960015 (March 15, 1996)
MN960027 (March 15, 1996)
MN960031 (March 15, 1996)
MN960035 (March 15, 1996)
MN960039 (March 15, 1996)
MN960061 (March 15, 1996)
Ohio
OH960002 (March 15, 1996)
OH960028 (March 15, 1996)
OH960029 (March 15, 1996)
OH960034 (March 15, 1996)
Wisconsin
WI960010 (March 15, 1996)
WI960014 (March 15, 1996)

Volume V

Arkansas
AR960001 (March 15, 1996)
AR960023 (March 15, 1996)
AR960027 (March 15, 1996)
Iowa
IA960002 (March 15, 1996)
Kansas
KS960009 (March 15, 1996)
KS960025 (March 15, 1996)
Texas
TX960018 (March 15, 1996)

Volume VI

California
CA960034 (March 15, 1996)
Idaho
ID960003 (March 15, 1996)
South Dakota
SD960005 (March 15, 1996)
SD960006 (March 15, 1996)
Wyoming
WY960004 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 11th Day of October 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–26600 Filed 10–17–96; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Voluntary negotiation period, precontroversy discovery schedule, and request for notices of intent to participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing a voluntary negotiation period for the 17 U.S.C. 118 noncommercial educational broadcasting compulsory license, along with a precontroversy discovery schedule, a request for Notices of Intent to Participate, and the initiation date should arbitration proceedings be necessary.

DATES: Notices of Intent to Participate are due on or before December 13, 1996.

ADDRESSES: If sent by mail, an original and five copies of Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of Notices of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E. Washington D.C. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya Sandros, CARP Specialist, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. The last adjustment of the terms and rates for the section 118 license occurred in 1992, thus, making 1997 a window year for the adjustment of these terms and rates.

Section 118(b) provides that copyright owners and public broadcasting entities may voluntarily negotiate licensing agreements at any time, and that such licensing agreements will be ''given effect in lieu of any determination by the Librarian of Congress; *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.'' 17 U.S.C. 118(b)(2).

Those parties not subject to a negotiated license must follow the terms and rates adopted through arbitration proceedings conducted under chapter 8 of the Copyright Act. Section 118(b)(3) provides:

> In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress. * * *

Subsection (c) provides that these procedures are to ''be * * * concluded between June 30 and December 31, 1997. * * *'' [1]

In order to commence the adjustment process described in section 118, the Copyright Office of the Library of Congress is publishing today's notice. With respect to private licenses, we note that the statute provides that they may be negotiated at any time and must be submitted to the Copyright Office in order to be effective. However, in keeping with Copyright Royalty Tribunal tradition, *see e.g.* 57 FR 29066 (June 30, 1992), we believe that it is appropriate and efficient to designate a negotiation period, prior to copyright arbitration royalty panel (CARP) proceedings, in order to encourage private agreements and, possibly, avoid the need for a CARP. Consequently, we are announcing a voluntary negotiation period commencing November 1, 1996, and running to December 13, 1996. Any agreements entered into during this period should be deposited with the Copyright Office in accordance with the regulations established in 37 CFR 201.9. Of course, license agreements may still be negotiated and deposited prior to, and after, the designated negotiation period.

The Library notes that while many of the terms and rates of the section 118 license typically have been subject to private negotiation, certain terms and rates have not. These terms and rates affect the works of unknown copyright owners and owners not affiliated with one or more of the performing rights societies and/or artists organizations. *See, e.g.* 37 CFR 253.5(c)(4) and 253.6(c)(4). The Library recognizes that it is difficult, if not impossible, for noncommercial educational broadcasting entities to identify these copyright owners in order to negotiate terms and rates of licenses. Consequently, in these limited circumstances where negotiated licenses are not practicable, the Library is willing to accept proposals for terms and rates from noncommercial education broadcasting entities and subject them to the public notice and comment provisions of § 251.63(b) of the Library's rules. The Librarian will adopt the proposed rates and terms, unless a copyright owner, with a significant interest in the proposal and an intent to participate fully in a CARP proceeding, files comment opposing the proposed terms and rates.

For all other terms and rates for the section 118 license, in the absence of negotiated licenses, the Librarian of Congress will convene a CARP. The proceeding will be conducted according to the following schedule.

Notices of Intent To Participate

Any party wishing to appear before the CARP, and to present evidence, in this proceeding must file a Notice of Intent to Participate by December 13, 1996. Failure to file a timely Notice of Intent to Participate will preclude a party from participating in this proceeding.

Precontroversy Discovery Schedule

The Library of Congress is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the establishment of rates and terms for the section 118 compulsory license. In addition, the Library is announcing the date on which arbitration proceedings will be initiated before a CARP, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. Commencement of the Proceeding

A rate adjustment proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

Both of these phases to a rate adjustment proceeding require significant amounts of work, not just for

[1] Section 253.1 of the Copyright Office's rules, 37 CFR, provides that the current statutory terms and rates for the section 118 license will expire on December 31, 1997.

the parties, but for the Librarian, the Copyright Office, and the arbitrators as well. The rates and terms proceeding for section 118 is not the only CARP proceeding likely to take place during 1997. Other proceedings will include distribution of cable, satellite, and digital audio royalties, as well as rate adjustment proceedings for satellite, the digital performance license (section 114), and the mechanical license (section 115). It would be extremely difficult for the Office to conduct the precontroversy discovery phase of more than one of these proceedings at the same time, and the Library must, therefore, conduct them sequentially.

Because of the number of CARP proceedings to be conducted in 1996 and 1997, and the attending workload, selection of a date to initiate a section 118 rate setting proceeding is not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved. The parties affected by section 118 are most likely aware that 1997 is a window year for the adjustment of terms and rates, and, as described above, are being given a formal negotiation period to reach agreements. Because of the other proceedings which must be scheduled, the attending workload, and the need to manage the interests of all involved, the Library is announcing the precontroversy discovery schedule and arbitration period in this proceeding without seeking further comment from the participating parties.

B. Precontroversy Discovery Schedule and Procedures

Any party that has filed a Notice of Intent to Participate in the section 118 adjustment proceeding is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party nonprivileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The rules of the Library of Congress do not specify any particular steps or regimen to the precontroversy discovery period. We believe, however, that it is necessary to establish procedural dates for exchange of documents and filing of motions within the 45-day period to provide order and allow discovery to proceed smoothly and efficiently. The precontroversy discovery schedule set forth by the Library in the recent cable distribution proceeding, *see* 60 FR 14975 (March 21, 1995), proved to be successful in promoting an orderly and efficient discovery period, and we have chosen to adopt the same format and structure for the precontroversy discovery period in this proceeding.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases	January 10, 1997
Requests for Underlying Documents Related to Written Direct Cases	January 17, 1997
Responses to Requests for Underlying Documents	January 24, 1997
Completion of Document Production	January 31, 1997
Follow-up Requests for Underlying Documents	February 5, 1997
Responses to Follow-up Requests	February 10, 1997
Motions Related to Document Production	February 14, 1997
Production of Documents in Response to Follow-up Requests	February 19, 1997
All Other Motions, Petitions, and Objections	February 24, 1997

The precontroversy discovery period, as specified by § 251.45(b) of the rules, begins on January 10, 1997, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate *must* file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's case. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on January 10, 1997, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by January 17, 1997, and responses to those requests are due by January 24, 1997. Documents which are produced as a result of the requests must be exchanged by January 31, 1997. It is important to note that all initial document requests must be made by the January 17, 1997, deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by January 17, 1997; otherwise, the party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by February 5, 1997, and responses to those requests are due by February 10, 1997. Any documentation produced as a result of a follow-up request must be exchanged by February 19, 1997. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by January 17, 1997. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the February 5, 1997, deadline. Again, failure to make a timely follow-up request would waive that party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by February 14, 1997. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by February 24, 1997, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, but are not limited to,

objections to arbitrators appearing on the arbitrator list under 37 CFR 251.4, and petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is not required.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be brought to the Copyright Office at the following address no later than 5 p.m. of the filing deadline date: Office of the Register of Copyrights, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. 20540. The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44 (b)–(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

Because there are two phases to a rate adjustment proceeding—precontroversy discovery and arbitration—there are two time periods to be scheduled. The regulations do not provide how much time must separate precontroversy discovery from initiation of arbitration. There is no reason to schedule an inordinate amount of time between the two; however, there must be adequate time for the Librarian to rule upon all motions filed within the 45-day precontroversy period. The Librarian is also mindful that the arbitration phase must be concluded, and the Librarian's review of the panel's decision must be completed, by December 31, 1997. Consequently, the Library will initiate arbitration on April 7, 1997. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected. Delivery of the written report of the arbitrators to the Librarian, in accordance with 17 U.S.C. 802(e), must be no later than October 3, 1997.

Dated: October 9, 1996.

Marybeth Peters,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–26754 Filed 10–17–96; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Departures From FSAR

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to address issues associated with departures from the Final Safety Analysis Report.

DATES: This revision is effective on October 18, 1996. Comments are due on or before November 18, 1996.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm, on Federal workdays. Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301)–415–2741.

SUPPLEMENTARY INFORMATION: As a result of increased regulatory attention to Part 50 licensees' adherence to the Final Safety Analysis Report and the Updated Final Safety Analysis Report (FSAR), both licensees and NRC have identified numerous failures to conform to these documents. Given these findings, the Commission has reviewed the current Enforcement Policy to determine if additional guidance is needed to treat compliance issues associated with departures from the FSAR. The Commission has concluded that the guidance in the current Enforcement Policy, NUREG–1600, published in the Federal Register (60 FR 34381; June 30, 1995) should be revised.

Many operating licenses contain a finding which states that the licensed facility is as described in the FSAR, as amended and revised. In accordance with 10 CFR 50.59, the Commission allows licensees to make changes to the facility or procedures described in the FSAR and to perform certain tests or experiments not described in the FSAR without prior NRC approval provided evaluations are performed to demonstrate that the change does not involve an unreviewed safety question and the change does not conflict with a technical specification. Specifically, 10 CFR 50.59(a) provides:

> The holder of a license authorizing operation of a production or utilization facility may (i) make changes in the facility as described in the safety analysis report, (ii) make changes in the procedures as described in the safety analysis report, and (iii) conduct tests or experiments not described in the safety analysis report, without prior Commission approval, unless the proposed change, test, or experiment involves a change in the technical specifications incorporated in the license or an unreviewed safety question.

If an unreviewed safety question or a change to a technical specifications is involved, 10 CFR 50.59(c) requires that the licensee submit an application for a license amendment pursuant to 10 CFR 50.90, before making the change or departing from the FSAR.

Section 50.59(b) requires that the evaluation be documented in writing and maintained and reports of the changes be submitted to the Commission. Periodic updates to the FSAR are required by 10 CFR 50.71(e) to reflect changes made under 10 CFR 50.59.

The regulatory process is predicated on the assumption that when the license is issued, the facility, procedures, tests, and experiments will be as described in the FSAR. Thus, 10 CFR 50.59 is primarily a prospective requirement. Section 50.59 requires a process to be followed in evaluating proposed changes from the description of the facility and its procedures described in the FSAR. However, 10 CFR 50.59 is also used to form the basis for citations when the facility or procedures never met the description in the FSAR. These cases represent de facto changes from the FSAR. A failure of the facility to conform to the FSAR may also mean that the FSAR may contain inaccurate or incomplete information, subjecting the licensee to enforcement action for a violation of 10 CFR 50.9.

In addition, failure to meet a specific commitment in the FSAR which

describes how the licensee was to meet a regulatory requirement, may be a violation of that regulatory requirement. In some cases, the departure from the FSAR, if it does not involve a change to the facility, procedures, or tests or experiments described in the FSAR, may not cause the licensee to be in violation of any legal requirement. In such cases, the departure from the FSAR would not be a violation, and only a Notice of Deviation may be warranted.

Thus, there are a variety of requirements that can be used to form the basis for enforcement action to address departures from the FSAR. Each potential enforcement case is reviewed on its merits to determine which requirement, or set of requirements, is appropriate to base the enforcement action on. Given a violation of NRC requirements, the next step in the process is to determine the severity level of the violation based on the safety and regulatory significance of the violation. The Enforcement Policy provides definitions of severity levels (Section IV. Severity of Violations) and examples (Supplements I–VIII) which are used in categorizing the severity levels of violations.

Revisions to the NRC Enforcement Policy

Given the variety of discrepancies from the FSARs that have been recently found, additional guidance has been developed to address severity levels to categorize violations of 10 CFR 50.59 and 50.71(e) and reporting requirements, application of the corrective action factor in Section VI.B.2.c. of the Enforcement Policy, use of Section VII.B.3 of the Enforcement Policy, Enforcement Discretion for Violations Involving Old Design Issues, and applying enforcement discretion to increase sanctions in this area under Section VII.A.2 of the Enforcement Policy.

In developing this guidance, the Commission considered the following two principles: (1) The importance of licensees performing appropriate evaluations to ensure that there are not unreviewed safety questions or conflicts with technical specifications, and (2) the importance of maintaining and controlling changes to the FSAR so that both the licensee and the NRC understand the regulatory envelope that has been established for the facility. The changes to the Enforcement Policy described below should make it clear to licensees that the Commission believes that failures in either area can be significant and can justify substantial regulatory action.

The Commission recognizes that not every unreviewed safety question is a significant safety issue. However, until the question is reviewed and understood, there is an uncertainty in the basis for the Commission's safety decision in licensing the plant. Therefore, the failure to follow the regulatory process established by 10 CFR 50.59, regardless of the actual safety significance of the change, when there is an unreviewed safety question or a conflict with a technical specification, is a significant regulatory concern. Licensees must ensure that they are in conformance with the FSAR as it was a key element for the basis for the Commission's decision in licensing the plant and continues to be an important consideration in current licensing actions. The enforcement process is a tool that the Commission intends to use to emphasize the importance of achieving this conformance and deter violations from continuing in this area.

1. Severity Levels

The definitions and examples of severity levels in the current Enforcement Policy provide sufficient guidance to cover most potential violations. Additional guidance is needed to address violations of 10 CFR 50.59 and 50.71(e) which are the requirements that likely will most often be used to address departures from the FSAR. Currently, two specific examples are provided to categorize violations of 10 CFR 50.59 in Supplement I, Reactor Operations and no examples specifically address violations of 10 CFR 50.71(e).

The first example, I.C.5, provides that a Severity Level III violation would involve:

> A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought.

This example includes changes involving unreviewed safety questions and conflicts with technical specifications. It also includes situations not involving an unreviewed safety question where the licensee would need to perform a detailed evaluation before it would have had a reasonable expectation that an unreviewed safety question was not involved without the performance of a detailed evaluation. This is significant because of the importance of licensees using the required process for maintaining and operating the facilities in accordance with the design and procedures described in the FSAR when there is uncertainty as to whether an unreviewed safety question is present. An after-the-fact evaluation that demonstrates that an unreviewed safety question was not involved would, in general, not mitigate the regulatory significance of failing to perform an appropriate evaluation prior to implementation of the change.

The second example, I.D.2, provides that a Severity Level IV violation would be a failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation.

Revised Examples of Severity Levels

Consistent with the above two principles, the changes to the Enforcement Policy provide additional examples to categorize severity levels for violations associated with failures to meet the FSAR. The current two examples described above are deleted and the following ten examples are being added to the policy:

Severity Level II

One example of a Severity Level II problem (the term ''problem'' is used here since more than one violation is involved) is proposed. Example I.B.4 [1] addresses inspection findings involving a number of failures to meet 10 CFR 50.59 including several unreviewed safety questions, and/or conflicts with a technical specification, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment. This situation is a very significant concern, the definition of a Severity Level II problem, because of the breadth of the process failures and the impact on equipment operability as well as the licensing envelope.

As to Severity Level II violations or problems, the Enforcement Policy provides that the base civil penalty for a Severity Level II violation or problem is $88,000. However, Section VII.A.1.a of the Policy provides that discretion should be considered for Severity Level II cases. In assessing civil penalties for cases meeting the above example, discretion will be considered, consistent with the Policy, based on the number and nature of the violations and the breadth of the problem that warranted the Severity Level II categorization in determining whether civil penalties substantially in excess of the base amount are warranted. This will include consideration of assessing separate civil penalties for each violation that is aggregated into the Severity Level II problem.

[1] The examples are numbered in accordance with the numbering used in the changes to the Enforcement Policy.

Severity Level III

Four examples of Severity Level III violations are added that demonstrate a significant regulatory concern, the definition of a Severity Level III violation:

Example I.C.10 involves an unreviewed safety question, and/or conflict with a technical specification. Example I.C.11. addresses the failure to perform the required evaluation under section 50.59 prior to implementation of the change in those situations in which an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist. The fact that a post-implementation evaluation demonstrated that no unreviewed safety question existed would not mitigate the regulatory significance of the failure to perform the required evaluation prior to implementation of the change. These two examples encompass the prior example I.C.5. Example I.C.11 is set out as a separate example to give clearer notice.

Example I.C.12 addresses programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) which show a significant lack of attention to detail resulting in a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. This example addresses a current programmatic failure or past programmatic failure of current concern to meet 10 CFR 50.59 or 50.71(e). Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures.

Example I.C.13. addresses the failure to update the FSAR as required by 10 CFR 50.71(e) where the failure to update the FSAR resulted in an inadequate decision that demonstrates a significant regulatory concern. This example addresses a significant failure associated with 10 CFR 50.71(e) where the violation adversely impacted other decisions such as whether or not a license amendment is needed or whether or not an NRC licensing action should be taken. An example of such a violation would be the failure to update the FSAR to delete a reference to equipment that had been properly removed from the facility. As a result an inadequate decision was made that an unreviewed safety question was not present for a subsequent change to the facility based on the presumed presence of equipment that the FSAR erroneously indicated was still present in the plant.

Severity Level IV

Four examples of Severity Level IV violations are added that demonstrate violations of more than minor concern which left uncorrected, could become a more significant concern, the definition of a Severity Level IV violation.

Example I.D.5 addresses relatively isolated violations [2] of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Example I.D.6 addresses a relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test. Example I.D.7 addresses a failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented. These three examples are, by their nature, less significant than a Severity Level III violation.

Example I.D.8 addresses a past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a current concern that 10 CFR 50.59 requirements are not being met. This example is similar to example I.C.12. However, it is less significant because it does not involve a current performance issue nor does it have a current impact. This would address past programmatic issues where both the cause and the impacts have been corrected.

The determination of whether a violation or grouping of violations should be considered a severity level III or IV matter will require exercise of judgement to determine if the failures are sufficiently broad and programmatic to warrant a finding of significant regulatory concern. To maintain consistency and fairness, the regions will coordinate with the Office of Enforcement on severity level IV cases where there is a potential to categorize the violations at a severity level III.

[2] Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting the requirements of 10 CFR 50.59 or 50.71(e).

Minor Violations

An example is added to address minor violations which are not subject to formal enforcement action under the Enforcement Policy and are not normally addressed in inspection reports. Example I.E addresses a failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. The example also addresses a failure to meet a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities.

This example is provided because 10 CFR 50.59 covers the complete FSAR. However, there are some descriptions in the FSAR of the facility or procedures that have very little or no relevance to safety and are of little or no regulatory concern. Nevertheless, by the specific terms of the regulation, changes to the facility as described in the FSAR must be evaluated. Violations in these areas are by definition minor and if included in an inspection report would be non-cited pursuant to section IV of the Enforcement Policy such as a change to the location of sanitary sewer lines (in contrast to natural gas pipelines) in owner controlled areas. The focus of this example is on plant equipment, procedures, tests, or experiments described in the FSAR that would not reasonably have any impact on safety regardless of the change. If the change involves equipment, procedures and tests that have some safety purpose the violation should normally be considered to be of more than a minor concern.

2. Corrective Action

Corrective action is a key element in considering the appropriate sanction. The discussion of corrective action in Section VI.B.2.c. of the Enforcement Policy has been expanded to provide that in response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee (1) makes a prompt decision on operability, and either (2) makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition, or (3) promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B if it intends to restore the facility or procedure to the FSAR description. It is important for

licensees to recognize the need for these actions because until such actions are taken the violation continues unabated.

3. Reporting

Section IV.D. of the Enforcement Policy provides that unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should be reported. The Policy has been clarified to make it clear that failure to make a required report under 10 CFR 50.72 and 50.73, if the matter not reported involves (i) an unreviewed safety question (ii) a conflict with a technical specification or (iii) any Severity Level III violation, is a significant regulatory concern. The NRC needs such information concerning significant issues to carry out its regulatory responsibilities.

4. Old Design Issues

Section VII.B.3, Violations Involving Old Design Issues, of the Enforcement Policy addresses enforcement discretion for old design issues and may be applicable to some 10 CFR 50.59 violations to the extent that voluntary action by a licensee identifies a past problem, such as in engineering, design, or installation. This discretion addresses violations that would not likely be identified by routine licensee efforts such as normal surveillance or quality assurance activities. Identification of past violations through required efforts would be treated using the normal policy.

This provision was originally adopted to encourage voluntary initiatives to establish design reconstitution programs such as licensee initiated safety systems functional inspections to identify and correct past design errors. This section places a premium on licensees identifying issues before degraded equipment is called upon to work. Similarly, application of this provision in the policy to past FSAR issues could encourage licensees to establish programs with goals to ensure full compliance with the FSAR licensing basis and determine if there are unknown unreviewed safety questions that have not been identified and addressed. To justify the exercise of Section VII.B.3 discretion, licensees must take comprehensive corrective action. The policy provides that licensees should expand their reviews, as necessary, to identify other failures from similar root causes. Thus, in applying this discretion, as with any significant violation associated with 10 CFR 50.59 and 50.71(e), the licensee should be taking broad corrective action to ensure that the licensee is meeting its licensing basis. The corrective action should have a defined scope and schedule.

The Commission intends to utilize Section VII.B.3 of the Enforcement Policy to provide incentives to encourage licensees to identify and correct violations which are not normally identified through current surveillance and quality assurance activities. Enforcement action would normally not be taken against a licensee if the licensee identifies violations up to and including Severity Level II associated with the FSAR by a voluntary initiative (including either a formal program or informal effort where issues are identified through a questioning attitude of an employee), provided the licensee takes comprehensive corrective action and appropriately expands the scope of the voluntary initiative to identify other failures with similar root causes. If this enforcement discretion is utilized, the licensee's voluntary initiative must be described in writing and be publicly available. The staff will reference and summarize the licensee's voluntary initiative, including the scope and schedule for corrective action, in an inspection report and will follow the licensee's corrective action until complete as an inspection report open item.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years of this policy change);

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

Applying this discretion should further the objectives of the Enforcement Policy to encourage identification and correction of violations as well as provide deterrence for future violations.

The Commission recognizes the importance to provide licensees with incentives to embark on voluntary initiatives to identify and correct FSAR discrepancies. However, licensees should be designing and implementing their programs with goals to have these discrepancies identified in the near term. Therefore, it is not appropriate to continue indefinitely the granting of enforcement discretion in cases where the NRC identifies the violations. As provided above in item a, for NRC identified violations use of Section VII.B.3 enforcement discretion for FSAR discrepancies will consider the schedule for the licensee's voluntary initiative and when NRC identified the violation. The two year period will provide a reasonable time period and incentive for licensees to plan and conduct appropriate reviews to ensure that their facilities meet the descriptions in the FSAR and take necessary corrective action. The staff will continue to document in inspection reports the results of its inspections against the FSAR and other than the exception noted in item a, above, will continue enforcement for NRC-identified violations.

Following this two year period, if a Severity Level II ($88,000) or III ($55,000) violation is identified, the Commission intends to use its discretion to increase the fine and could assess civil penalties for each violation or problem of $110,000 which may be further escalated after considering the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted), rather than the normal assessment factors. This approach is intended to increase the incentive for licensees to take timely action to ensure that their facilities match the FSAR. For example, if a single Severity Level III violation is identified by the NRC and it lasted for more than one day, a civil penalty of $220,000 could be assessed. If the licensee identified the same violation and application of enforcement discretion under Section VII.B.3 was not warranted, a civil penalty of $110,000 ($55,000 × 2 days) could be assessed for the example cited above which will provide some recognition of the licensee's efforts. Section VII.A.1 of the

Enforcement Policy is being amended consistent with this approach.

In summary, to encourage licensees promptly to undertake voluntary initiatives to identify and correct FSAR noncompliances, the NRC is modifying Section VII.B.3 of the Enforcement Policy to provide for:

(1) The exercise of discretion to refrain from issuing civil penalties and, in some instances, citations for a two year period where a licensee undertakes voluntary initiative to identify and correct FSAR noncompliances that will be completed within that two year period, and

(2) The exercise of discretion to escalate the amount of the civil penalties for FSAR/50.59 noncompliances identified by the NRC subsequent to the two year voluntary initiative period.

Amounts of Penalties

The amounts of penalties reflected in this Notice and the accompanying Policy Statement are based on the current Policy Statement that was revised on October 4, 1996 and published in the Federal Register on October 11, 1996 (61 FR 53557). The revised penalty amounts apply to violations occurring or continuing after November 12, 1996. Otherwise the amounts in the Policy Statement at the time of the violation will be used in assessing any civil penalty.

Paperwork Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

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

Accordingly, the NRC Enforcement Policy is amended as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

1. In Section VI., add the following language at the end of paragraph B.2.c.

VI. Enforcement Actions

* * * * *

B. Civil Penalty. * * *

2. Civil Penalty assessment. * * *

c. Credit for prompt and comprehensive corrective action * * *

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee

(i) Makes a prompt decision on operability; and either

(ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or

(iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B if it intends to restore the facility or procedure to the FSAR description.

* * * * *

2. In Section VII., add the following language as paragraph h. at the end of paragraph A.1.g.:

VII. Exercise of Discretion

A. Escalation of Enforcement Sanctions. * * *

h. Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

* * * * *

3. In Section VII. add at the end of paragraph B.3:

B. Mitigation of Enforcement Sanctions. * * *

3. Violations Involving Old Design Issues. * * *

* * * * *

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. In Supplement I, paragraphs C(5) and D(2); are removed and paragraphs B(4), C(10), C(11), C(12), C(13), C(14), D(5), D(6), D(7), D(8) and E are added to read as follows:

Supplement I—Reactor Operations

B. Severity Level II—Violations involving for example:

* * * * *

4. Failures to meet 10 CFR 50.59 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. Severity Level III—Violations involving for example:

* * * * *

5. [Reserved]

* * * * *

10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;

11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;

12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the accuracy of the FSAR or a concern that

10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: (a) the time period over which the violations occurred and existed, (b) the number of failures, (c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and (d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. Severity Level IV—Violations involving for example:

* * * * *

2. [Reserved]

* * * * *

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

E. Minor Violations:

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc. that is being changed, tested, or experimented on.

* * * * *

Dated at Rockville, MD, this 11th day of October 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–26679 Filed 10–17–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Evidence of Martial Relationship—Living with Requirements.

(2) *Form(s) submitted:* G–124, G–124a, G–237, G–238, and G–238a.

(3) *OMB Number:* 3220–0021.

(4) *Expiration date of current OMB clearance:* November 30, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, State, Local or Tribal Government.

(7) *Estimated annual number of respondents:* 1,100.

(8) *Total annual responses:* 1,100.

(9) *Total annual reporting hours:* 196.

(10) *Collection description:* Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements of such benefits. The collection obtains information supporting claimed common-law marriage, termination of previous marriages and residency requirements.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–26803 Filed 10–17–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22279; 811–4439]

Alliance Convertible Fund; Notice of Application

October 11, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Alliance Convertible Fund.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 5, 1996 and amended on October 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that is organized as a business trust under the laws of Massachusetts. Applicant registered under the Act and filed a registration statement on Form N–1A on October 28, 1985. Applicant's registration statement was declared effective on January 29, 1986, and applicant commenced a public offering of its shares shortly thereafter.

2. On January 17, 1991, applicant's board of trustees considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance Growth and Income Fund, Inc. (the ''Acquiring Fund''), a registered open-end investment company. The board of trustees made the findings required by rule 17a–8 under the Act, *i.e.*, that the reorganization was in the best interest of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of shares held at that time by applicant's shareholders.[1] In determining that applicant should enter into the reorganization, the trustees considered, among other things, the investment objectives, policies, and restrictions of applicant and the Acquiring Fund.

3. On February 19, 1991, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On April 26, 1991, applicant's shareholders approved the reorganization.

4. On May 10, 1991, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. The shares of the Acquiring Fund received by applicant were distributed to the holders of applicant's shares based on the relative net asset values per share of the two funds.

5. The expenses incurred in connection with the reorganization were paid by Alliance Capital Management L.P., applicant's investment adviser. No brokerage fees were paid in connection with the reorganization.

6. Subsequent to the filing of the Form N–8F, applicant will terminate its legal existence in accordance with the laws of Massachusetts.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26789 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–P

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 22280; 811–4139]

Alliance Counterpoint Fund; Notice of Application

October 11, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Alliance Counterpoint Fund.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 26, 1996 and amended on October 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that is organized as a business trust under the laws of Massachusetts. Applicant registered under the Act and filed a registration statement on Form N–1A on October 31, 1984. Applicant's registration statement was declared effective on February 8, 1985, and applicant commenced a public offering of its shares shortly thereafter.

2. On November 28, 1995, applicant's board of trustees considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance Premier Growth Fund, Inc. (the ''Acquiring Fund''), a registered open-end investment company. The board of trustees made the findings required by rule 17a–8 under the Act, *i.e.*, that the reorganization was in the best interest of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of shares held at that time by applicant's shareholders.[1] In determining that applicant should enter into the reorganization, the trustees considered, among other things, the investment objectives, policies, and strategies of applicant and the Acquiring Fund.

3. On December 22, 1995, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On February 29, 1996, applicant's shareholders approved the reorganization.

4. On March 22, 1996, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. The class A, B, and C shares of the Acquiring Fund received by applicant were distributed to the

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

holders of the corresponding class of applicant's shares based on the relative net asset values per share of the two funds.

5. The expenses incurred in connection with the reorganization were paid by Alliance Capital Management L.P., applicant's investment adviser. No brokerage fees were paid in connection with the reorganization.

6. Subsequent to the filing of the Form N–8F, applicant will terminate its legal existence in accordance with the laws of Massachusetts.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26787 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22278; 811–4371]

Alliance Global Fund; Notice of Application

October 11, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Alliance Global Fund.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 26, 1996 and amended on October 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that is organized as a business trust under the laws of Massachusetts. Applicant registered under the Act and filed a registration statement on Form N–1A on August 1, 1985. Applicant's registration statement was declared effective on October 21, 1985, and applicant commenced a public offering of its shares shortly thereafter.

2. On December 9, 1993, applicant's board of trustees considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance International Fund (the ''Acquiring Fund''), a registered open-end investment company. The board of trustees made the findings required by rule 17a–8 under the Act, *i.e.*, that the reorganization was in the best interest of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of shares held at that time by applicant's shareholders.[1] In determining that applicant should enter into the reorganization, the trustees considered, among other things, the investment objectives, policies, and restrictions of applicant and the Acquiring Fund.

3. On January 7, 1994, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On March 18, 1994, applicant's shareholders approved the reorganization.

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

4. On March 25, 1994, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. The shares of the Acquiring Fund received by applicant were distributed to the holder of applicant's shares based on the relative net asset values per share of the two funds.

5. The expenses incurred in connection with the reorganization were paid by Alliance Capital Management L.P., applicant's investment adviser. No brokerage fees were paid in connection with the reorganization.

6. Subsequent to the filing of the Form N–8F, applicant will terminate its legal existence in accordance with the laws of Massachusetts.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26788 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22281; 811–6207]

Alliance Multi-Market Income Trust, Inc.; Notice of Application

October 11, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Alliance Multi-Market Income Trust, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on July 26, 1996 and amended on October 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that is organized as a corporation under the laws of Maryland. Applicant registered under the Act and filed a registration statement on Form N–1A on October 31, 1990. Applicant's registration statement was declared effective on December 11, 1990, and applicant commenced a public offering of its shares shortly thereafter.

2. On June 14, 1994, applicant's board of directors considered and approved a sale of substantially all of the assets and liabilities of applicant to the Alliance World Income Trust, Inc. (the ''Acquiring Fund''), a registered open-end investment company. The board of directors made the findings required by rule 17a–8 under the Act, *i.e.*, that the reorganization was in the best interest of applicant and that there would be no dilution, by virtue of the proposed exchange, in the value of shares held at that time by applicant's shareholders.[1] In determining that applicant should enter into the reorganization, the directors considered, among other things, the investment objectives, policies, and restrictions of applicant and the Acquiring Fund.

3. On June 24, 1994, a proxy statement was filed with the SEC and applicant mailed proxy materials to its shareholders approximately a month later. On September 1, 1994, applicant's shareholders approved the reorganization.

4. On September 1, 1994, applicant transferred its assets and liabilities to the Acquiring Fund in exchange for shares of the Acquiring Fund on the basis of the relative net asset values per share of applicant and the Acquiring Fund. The shares of the Acquiring Fund received by applicant were distributed to the holders of applicant's shares based on the relative net asset values per share of the two funds.

5. The expenses incurred in connection with the reorganization were paid by Alliance Capital Management L.P., applicant's investment adviser. No brokerage fees were paid in connection with the reorganization.

6. Subsequent to the filing of the Form N-8F, applicant will dissolve under the laws of Maryland.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has retained no assets. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26786 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persona, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. IC–22276; 811–5905]

Photonic Fund, Inc.; Notice of Application

October 10, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Photonic Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 19, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 4, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 6735 Anders Terrace, Springfield, Virginia 22151.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representation

1. Applicant is an open-end diversified management investment company that is organized as a management investment company. SEC records indicate that, on September 25, 1989, applicant registered under the Act and filed a registration statement on Form N–1A under the Act and the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant made no public offering of its securities.

2. Applicant has not sold any securities. Applicant has no assets, liabilities, or security holders. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it intend to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26713 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—22275; 812–10246]

Vanguard Money Market Reserves, Inc., et al.; Notice of Application

October 10, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Vanguard Money Market Reserves, Inc., Vanguard Balanced Index Fund, Inc., Vanguard Municipal Bond Fund, Inc., Vanguard California Tax-Free Fund, Vanguard Florida Insured Tax-Free Fund, Vanguard New Jersey Tax-Free Fund, Vanguard New York Insured Tax-Free Fund, Vanguard Ohio Tax-Free Fund, Vanguard Pennsylvania Tax-Free Fund, Vanguard Bond Index Fund, Inc., Vanguard Fixed Income Securities Fund, Inc., Vanguard/Wellesley Income Fund, Inc., Vanguard Asset Allocation Fund, Inc., Vanguard Convertible Securities Fund, Inc., Vanguard/Windsor Funds, Inc., Vanguard/Wellington Fund, Inc., Vanguard/Trustees' Equity Fund, Vanguard Equity Income Fund, Inc., Vanguard Index Trust, Vanguard Institutional Index Fund, Vanguard International Equity Index Fund, Inc., Vanguard Quantitative Portfolios, Inc., Vanguard Preferred Stock Fund, Vanguard/PRIMECAP Fund, Inc., Vanguard World Fund, Inc., Vanguard/Morgan Growth Fund, Inc., Vanguard Explorer Fund, Inc., Vanguard Specialized Portfolios, Inc., Vanguard Variable Insurance Fund, Vanguard Admiral Funds, Inc., Vanguard Tax-Managed Fund, Inc., Vanguard Whitehall Funds, Inc., Vanguard STAR Fund, and Gemini II, Inc., (collectively, the ''Funds'') and The Vanguard Group, Inc. (the ''Vanguard Group'' or ''Vanguard'').

RELEVANT ACT SECTION: Order requested under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend an existing order (the ''Existing Order'') that permitted applicants to operate a joint account that invests solely in repurchase agreements of seven days or less.[1] The amended order would permit applicants to deposit uninvested cash into one or more joint accounts authorized to invest in repurchase agreements with maturities of up to 60 days as well as other short-term investments.

FILING DATES: The application was filed on July 11, 1996, and amended on September 27, 1996. Applicants agree to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 4, 1996, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Vanguard Financial Center, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds, except for Vanguard STAR Fund and Vanguard Institutional Index Fund, are members of the Vanguard Group of Investment Companies, a group of over 30 registered management investment companies that currently offer shares in over 90 portfolios. Each Fund is registered as an open-end management investment company, except for Gemini II, Inc., which is registered as a closed-end investment company. Applicants request that any relief granted pursuant to the application also apply to any other investment companies or portfolios thereof which are or may become members of the Vanguard Group of Investment Companies or for which Vanguard provides advisory or distribution services.

2. The Vanguard Group, a wholly and jointly owned subsidiary of its member Funds, and a registered investment adviser and transfer agent, provides corporate management, administrative, transfer agent, and distribution services to the Funds on a at-cost basis pursuant to an agreement approved by shareholders of each of its member Funds. Vanguard also provides investment advisory services to certain member Funds on an at-cost basis. Vanguard Institutional Index Fund is not a member of the Vanguard Group, but receives services from Vanguard on an at-cost basis pursuant to an individual service agreement. Vanguard STAR Fund, which invests exclusively in other Vanguard Funds, is also not a member of the Vanguard Group. The boards of directors of the Funds and of Vanguard are presently the same. Eight of the ten directors have no affiliation with the Funds or Vanguard other than as directors.

3. The Existing Order permits the Funds to invest through a joint account (''Joint Account'') in repurchase agreements with a maturity of seven days or less. Applicants propose to continue to operate the Joint Account in the same manner as permitted by the Existing Order, subject to the proposed modifications discussed below.

4. Applicants propose to amend the Existing Order to permit the Funds to pool their daily uninvested cash balances into one or more Joint Accounts authorized to (a) invest in (i) tax-exempt variable rate demand notes (''VRDNs'') with demand features providing for maturities of up to 30 days or one month and (ii) securities (other than VRDNs) exempt from federal and/or state income tax with remaining maturities of up to 60 days (collectively, ''Tax-Exempt Securities''), (b) invest in commercial paper, certificates of deposit, other non-government money market securities, and U.S. Government Securities (i.e., obligations issued or guaranteed as to principal or interest by the U.S. Government and by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments) that have remaining maturities of up to 60 days (collectively, ''Short-Term Money Market Securities'') and (c) invest in repurchase agreements with maturities of up to 60 days.

5. If a tax-exempt money market fund contributes cash to a Joint Account, the cash only will be invested in securities that qualify for purchase by a tax-exempt money market fund under rule 2a–7 under the Act, as it may be amended from time to time.

6. The VRDNs include short-term tax-exempt demand obligations that have a variable or floating interest rate and an unconditional right to demand payment of the unpaid principal and accrued interest within 30 days or one month. The variable or floating rate features of the VRDNs provide for the readjustment of the interest rate to a rate then

[1] *Wellington Fund, Inc., et al.,* Investment Company Act Release Nos. 15605 (March 5, 1987) (notice) and 15653 (March 31, 1987) (order).

prevailing for similar instruments so that such securities reasonably can be expected to maintain a market value that approximates the par value of the notes.

7. Vanguard's investment management staff is responsible for negotiating the terms of the repurchase agreements. In connection with the use of repurchase transactions collateralized by U.S. Government Securities, each of the Funds has established the same systems and standards. These include quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be collateralized fully, as defined in rule 2a–7 under the Act. Any joint repurchase agreement transaction will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with any other existing and future positions taken by the SEC in any release proposing, reproposing, or adopting any new rule or any amendments to any existing rule.

8. Each Fund will automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into the Joint Account. The officers and employees of Vanguard, or the investment adviser of each Fund will determine whether to invest a Fund's assets in repurchase agreements, Tax-Exempt Securities, or Short-Term Money Market Securities (collectively, ''Short-Term Investments''). Each Fund will be able to invest in Short-Term Investments through a Joint Account if such investment is consistent with the Fund's investment objectives and policies. The transactions entered into on behalf of a Joint Account will be recorded and monitored following the same procedures set forth in the Existing Order. Each portfolio manager would have the discretion whether to invest a Fund's cash in the securities purchased by the Joint Account or to separately invest cash on an individual Fund basis in appropriate short-term investments given a Fund's investment limitations.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of a registered investment company from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order.

2. Each Fund, by participating in the proposed Joint Accounts, as proposed to be modified, and Vanguard, by managing the proposed Joint Accounts, could be deemed to be ''joint participants'' in a transaction within the meaning of section 17(d). In addition, a proposed Joint Account could be deemed to be a ''joint enterprise or other joint arrangement'' within the meaning of rule 17d–1.

3. Applicants believe that the proposed amendments to the method of operating the Joint Account will not result in any conflicts of interest between any of the Funds or between the Funds and Vanguard or a Fund's adviser. Although an adviser will realize some benefits through administrative convenience and some possible reduction in clerical costs, the Funds will be the primary beneficiaries because the Joint Accounts may result in higher returns and would be a more efficient means of administering daily cash investments. Applicants believe that the operation of the Joint Account will be free of any inherent bias favoring one Fund over another.

4. Applicants also believe that the future participation in the Joint Account by one or more Funds that do not presently exist would be desirable without the necessity of applying for an amendment of the requested order. Applicants represent that additional Funds will only be permitted to participate in the Joint Account on the same terms and conditions as the existing Funds.

Applicants' Conditions

Applicants will comply with the following as conditions to any order granted by the SEC:

1. The Joint Account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank or a designated sub-custodian bank except that monies from the Fund will be deposited in it on a commingled basis. The Joint Account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the Joint Account will be to provide a convenient way of aggregating what otherwise will be one or more individual daily transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund.

2. Cash contributed by a Fund to the Joint Account will be invested in one or more of the following, as directed by the Fund: (a)(1) Tax-exempt variable rate demand notes (''VRDNs'') with demand features providing for maturities of up to 30 days or one month and (2) securities (other than VRNDs) exempt from federal and/or state income tax with remaining maturities of up to 60 days, (b) commercial paper, certificates of deposit, other non-government money market securities, and U.S Government Securities that constitute ''Eligible Securities'' within the meaning of rule 2a–7 under the Act which have remaining maturities of up to 60 days, and (c) repurchase agreements with maturities of up to 60 days ''collateralized fully,'' as defined in rule 2a–7 under the Act, by U.S. Government Securities.

3. Any investment made by a Fund or Funds through the Joint Account will satisfy the investment criteria of all Funds participating in that investment.

4. All investments held by a Fund or Funds through the Joint Account would be valued on the basis of amortized cost to the extent permitted by applicable SEC release, rule or order.

5. Each Fund valuing its net assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the Joint Account in which such Fund has an interest (determined on a dollar weighted basis) for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in the Joint Account on that day.

6. In order to assure that there will be no opportunity for one Fund to use any part of a balance of the Joint Account credited to another Fund, no one Fund will be allowed to create a negative balance in the Joint Account for any reason. A Fund's decision to invest in the Joint Account will be solely at the Fund's option. A Fund will not be obligated to invest in the Joint Account nor to maintain any minimum balance. A Fund will be permitted to withdraw all, or a portion, of its investment in the Joint Account at any time. In addition, a Fund will retain the sole rights of ownership of any of its assets, including any interest payable on such assets invested in the Joint Account.

7. Each Fund and the custodian for each Fund will maintain records (in conformity with section 31 of the Act and the rules and regulations thereunder) documenting, for any given day, each Fund's aggregate investment in the Joint Account and each Fund's *pro rata* share of each Short-Term Investment made through the Joint Account.

8. Not every Fund participating in the Joint Account will necessarily have its cash invested in every Short-Term Investment held in the Joint Account. However, to the extent a Fund's cash is applied to particular Short-Term Investments made through the Joint Account, the Fund will participate in and own a proportionate share of such investment, and the income earned or accrued thereon, based upon the percentage of such investment purchased with monies contributed by the Fund.

9. Vanguard will administer the investment of cash balances in and operation of the Joint Account without payment of any additional fee or compensation. The investment adviser of each Fund will collect its fees based upon the assets of the Fund, which include the value of any assets the Fund has invested in the Joint Account.

10. The Board of Directors (Trustees) of each Fund will adopt procedures pursuant to which the Joint Account will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Boards will determine, no less frequently than annually, that the Joint Account has been operated in accordance with such procedures and will only permit a Fund to continue to participate in a Joint Account if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

11. The administration of the Joint Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

12. Short-Term Investments held through the Joint Account generally will not be sold prior to maturity except: (a) If the officers or employees of Vanguard believe the security no longer presents minimal credit risk; (b) in the case of taxable and tax-exempt securities, if as a result of a credit downgrading or otherwise, the security no longer satisfies the investment criteria of all Funds participating in that investment; or (c) in the case of a repurchase agreement, if the counterparty defaults. A Fund may, however, sell its fractional portion of a Short-Term Investment prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Fund and the transaction would not adversely affect the other Funds participating in the Short-Term Investment. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other funds participating in a particular Short-Term Investment or otherwise adversely affect the other participating Funds. Each Fund participating in the Short-Term Investment will be deemed to have consented to such sale and partition of the Short-Term Investment.

13. Any Short-Term Investment held through the Joint Account with a remaining maturity of more than seven days will be considered illiquid and, for any Fund that is an open-end management investment company registered under the Act, subject to the restriction that the Fund may not invest more than 15% (or such other percentages as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Fund cannot sell its fractional interest in the Short-Term Investment pursuant to the requirements described in the preceding condition.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26712 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To be Published.

CHANGE IN THE MEETING: Additional Item.

The following item will be considered at a closed meeting scheduled to be held on Wednesday, October 16, 1996, at 10:00 a.m.:

Opinion.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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 (202) 942–7070.

Dated: October 16, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–26928 Filed 10–16–96; 2:10 pm]

BILLING CODE 8010–01–M

[Release No. 34–37811; File No. SR–CSE–96–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange Relating to Continuous or Regular Quotation Obligations

October 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1996, the Cincinnati Stock Exchange (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposes to issue a reiteration and clarification of its rules concerning dealer obligations to provide continuous, two-sided quotations. Members will be notified of this reiteration and clarification by means of a Regulatory Circular (''Circular'').[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify the obligations of Designated Dealers to provide continuous quotations during the trading day. The Circular to be disseminated following approval of the proposal will provide guidance concerning quotation obligations at the opening and intra-day, during computer systems problems and unusual market conditions and will delineate enforcement standards. It will reiterate the obligations of a Designated Dealer to display a two-sided quotation immediately following the opening of the security on the primary market, and immediately to reestablish a quotation if that quotation is taken out during the day as a result of a transaction. The Exchange will thus reemphasize the

[1] The text of the Circular may be examined at the places specified in Item IV, *infra.*

need for Designated Dealers to maintain continuous, two-sided quotations throughout the trading day.

The Circular will specify the notification procedures to be followed in the event of a computer system problem that prevents a member firm from providing a continuous two-sided quotation. Frequent systems problems may result in deregistration in certain issues, or otherwise impact a dealer's status. In addition, the existence of unusual market conditions will not exempt a dealer from its continuous quotation obligations. Finally, the Circular will place members on notice that they will be informed of their compliance status at least quarterly, and will set forth possible sanctions resulting from non-compliance.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [2] in general and Section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principals of trade and 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] 15 U.S.C. 78f(b).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–96–08 and should be submitted by November 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26785 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37800; File No. SR–DTC–96–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of an Amendment to a Proposed Rule Change Relating to the Procedures To Establish a Direct Registration System

October 9, 1996.

On September 17, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–15) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] relating to the procedures to establish a direct registration system. On October 7, 1996, DTC filed an amendment to the proposed rule change.[2] Notice of the proposed rule change was published in the Federal Register on October 9, 1996.[3] The amendment is described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Larry Thompson, Senior Vice President and Deputy General Counsel, DTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation. Commission (October 7, 1996).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the amendment to the proposed rule change is to delete the requirement that limited participants accept dividend reinvestment instructions from DTC on DRS eligible securities that offer dividend reinvestment plans.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment of the proposed rule change is to delete a requirement that in order to participate in the DRS program that any DRS issue with a dividend reinvestment plan must be open to street-name holders. The amendment also modifies the Limited Participant Account Agreement to reflect the change in requirements.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

[3] Securities Exchange Act Release No. 37778 (October 3, 1996), 61 FR 52985.

[4] The Commission has modified parts of these statements.

[5] A complete description of the amended DRS service may be found in the Important Notices issued by DTC on the implementation of a DRS, which are attached as Exhibit A and Exhibit B. Important Notice B# 1811–96 (October 7, 1996) and Important Notice B# 1841–96 (October 7, 1996).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Although DTC did not solicit comments on DRS, over the last two years, a joint committee of representatives of the Securities Transfer Association, the Securities Industry Association, the Corporate Transfer Agents Association, and the depositories had met and agreed on the features of DRS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–15 and should be submitted by November 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—The Depository Trust Company Important Notice, DRS Alert

October 7, 1996.

B#: 1811–96
To: All Participants
Attention: Managing Partner/Officer, Cashier, Transfer Manager
Subject: Implementation of a Direct Registration System

In July DTC advised Participants (reference Important Notice #1368–96 dated July 15, 1996) to plan for the implementation of a Direct Registration System (DRS) scheduled to pilot in November. Under DRS, Investors electing to have their ownership of securities registered on the issuer's records would be offered a choice between a registered certificate and a book-entry or ''direct registration'' position recorded on the books of the issuer's transfer agent.

The DRS pilot is scheduled to begin on November 11. DTC expects to be able to announce the issue selected for the initial pilot next week.

Eligibility

The DRS issues will be identified with special indicators on the Eligible Corporate Securities File (ELISC and ELISCD) and the Eligible Securities (CONI) Inquiry on PTS effective November 8, 1996. Specifications for the new indicators were released on August 20.

Transfers

Beginning November 11, all Withdrawal-by-Transfer (WT) requests on the DRS Issues made via PTS using function NWT1 or via computer-to-computer (CCF/CCFII) must include the following:

- a DRS indicator (permissible values are ''C'' if the investor wants a certificate issued, ''S'' if the investor is choosing to have a DRS position established, ''Y'' if the instruction represents a third-party transfer for a DRS position, or ''X'' if the Participant is reversing a previously established DRS position),
- the Participant's account number for this customer (required if the value of the DRS indicator is ''S'' or ''Y''), and
- the Participant's or correspondent's name (required if the value of the DRS indicator is ''S'' or ''Y'').

Specifications for the new WT input record were released on August 20. The new PTS input screen on the NWT1 function will be available in early November before the start of the DRS pilot. Participants submitting WT requests prior to cut-off time on Friday, November 8, for normal processing on Monday, November 11, for the pilot issues should not submit these WTs until Monday, November 11, to avoid drops due to a missing DRS indicator.

It should be noted that if a Participant has not made the new CCF changes to accommodate DRS, DTC will continue to accept the current format and process non-DRS WTs. However, DRS WTs will not be processed and will drop since no DRS indicator has been provided. DRS WTs would then have to be processed over PTS until the Participant's new CCF formats are in place. All DRS WT's that drop will be carefully monitored, and the Participant will be contacted by a Participant Services representative regarding follow-up on these items.

When a Participant's customer requests a DRS position, a DRS ''transaction advice'' will be mailed directly by the agent to the customer. The transfer agent's fee of 55¢ for mailing and handling the DRS transaction advice will be charged back to the Participant directly by DTC, similar to the Direct Mail process. DTC will then receive an automated confirmation from the agent that the DRS transaction advice has been process and mailed. Participants can access this information through their normal DMA return files (CCF, PTS, or hard copy). Participants not currently using the Direct Mail service will need to consider modifications to their procedures to monitor these advices as they are printed over the PTS network.

Investor-Directed Sale

An investor who opted for a DRS position must contact the transfer agent to direct the movement of the DRS position to its bank or broker/dealer. Specifications for the changes to the delivery order record to reflect movement of a DRS position were released on August 20 with modifications made on September 17.

Preparing for Implementation

Participants are urged to complete their final systems modifications to accommodate the DRS pilot scheduled to begin on November 11. As mentioned previously, the pilot issues will be announced next week.

DTC will be issuing weekly ''updates'' on the status of preparation for the DRS pilot from today through initial implementation. In addition, Participant Services representatives will be contacting those Participants submitting significant numbers of WT instructions to ensure their preparedness.

Please direct your questions to Al DeMalo, Director of Operations, at (212) 898–3171, the undersigned at (516) 227–4004, or your Participant Services representative.

Ronald J. Burns,

Vice President, Operations.

Exhibit B—The Depository Trust Company, Important

October 7, 1996.

B#: 1841–96
To: All Participants
Attention: Managing Partner/Officer, Cashier, Transfer Manager
Subject: *Direct Registration System Amendment*

The Direct Registration System (DRS) will permit issuers of securities to elect to create a DRS Program under which investors seeking to be registered on the books of an issuer or transfer agent would be offered the option of having their ownership reflected in a DRS position (essentially a ''book share'' position), rather than through the issuance of

a physical securities certificate. Under the structure for DRS developed by a joint committee of representatives of the Securities Industry Association, the Securities Transfer Association, and the Corporate Transfer Agents Association, issuers or transfer agents desiring to establish a DRS Program and meeting certain criteria would become DRS ''Limited Participants'' at DTC (*see* Important Notice B#1368–96).

In connection with certain recent actions by the New York Stock Exchange to amend the Exchange's listing standards as they apply to DRS issues, DTC is amending the criteria which must be met by entities wishing to become DRS Limited Participants at DTC. Under the original criteria as recently filed for approval with the SEC, transfer agents or issuers seeking admission to DTC as Limited Participants for the purpose of participating in DRS are required to, among other things, accept dividend reinvestment instructions from DTC on DRS issues which offer Dividend Reinvestment Plans. DTC will no longer require those seeking DRS Limited Participant status to meet this requirement as a condition precedent to membership.

Nevertheless, DTC continues to believe that the issue of ''open access'' to issuers' Dividend Reinvestment Plans for investors holding their positions through the depository is a significant one. The current exclusion of these investors by some issuers' plans is inappropriate and conflicts directly with the industry's efforts to promote efficient clearance and settlement practices. DTC will continue to press the SEC and issuers to make Dividend Reinvestment Plans available to all investors without regard to the form in which securities are held, working with others in the industry to achieve this important objective.

Please direct your questions to the undersigned at (516) 227–4004.

Ronald J. Burns,

Vice President, Operations.

[FR Doc. 96–26715 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37806; File No. SR–GSCC–96–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Substitution of Officer Titles

October 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 19, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. On September 30, 1996, GSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise GSCC's by-laws and rules to replace the titles of ''First Vice President,'' ''Senior Vice President,'' and ''Executive Vice President'' with the new title of ''Managing Director.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In order to conform GSCC's management structure with that of its members, GSCC has created a new title, ''Managing Director,'' in lieu of the titles ''First Vice President,'' ''Senior Vice President,'' and ''Executive Vice President.'' The purpose of this rule change is to modify GSCC's rules and by-laws to accommodate this change. Article III, Section 3.1 of GSCC's by-laws is being amended to establish the position of Managing Director as an officer of GSCC. Similarly, the definition of ''Officer of the Corporation'' contained in Rule 1 is being amended to replace First Vice President, Executive Vice President, and Senior Vice President with Managing Director. Article III, Section 3.5, which describes the powers and duties of Vice Presidents, is being revised to establish the powers and duties in Managing Directors that currently exists in Vice Presidents.[4] Article I, Sections 1.2 and 1.8 and Article V, Section 5.1 of the by-laws are being revised to permit Managing Directors, rather than Vice Presidents, to call special meetings, to serve as presiding officers of meetings, and to sign GSCC's share certificates.

GSCC's rules are being amended to authorize Managing Directors to act in those instances where First Vice Presidents, Senior Vice Presidents, or Executive Vice Presidents were formerly authorized to take certain actions. Specifically, Rule 22, Suspension of Rules, is being amended to allow any officer having a rank of Managing Director or higher, instead of any officer to extend, waive, or suspend time requirements fixed by GSCC's rules.[5] Rule 23, Action by the Corporation, is being revised to allow only officers having a rank of Managing Directors or higher to act for GSCC.

The proposed rule change is consistent with the requirements of Section 17A of the Act[6] in that it makes technical modifications to GSCC's by-laws and rules so that they coincide with GSCC's new internal management structure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by it.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(e)(3)[8] thereunder in that the proposed rule change is concerned solely with the administration of GSCC. At any time within sixty days after the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 27, 1996).

[3] The Commission has modified such summaries.

[4] In the absence or inability of the President to act, Section 3.5 is amended to replace Vice President with Managing Director as that officer who is to act in place of the President.

[5] Pursuant to the definition of officer of GSCC, the positions of Chairman of the Board, Vice Chairman of the Board, and President have a higher rank than Managing Director.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[8] 17 CFR 240.19b–4(e)(3) (1996).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–96–10 and should be submitted by November 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26716 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37809; File No. SR–NYSE–96–29]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of Proposed Rule Change Relating to Stock Distributions

October 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 10, 1996, the New York Stock Exchange Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the NYSE requires listed companies to mail stock certificates to record holders for all distributions, such as stock splits, mergers, and spin-offs, other than those relating to dividend reinvestment plans (''DRIPs'') and dividend reinvestment stock purchase plans (''DRSPPs''). The NYSE proposes to rescind this policy. Accordingly, listed companies engaged in distributions will be permitted to offer shareholders whose ownership of stock is directly registered with them or their transfer agents the choice of receiving either certificates or account statements.

The NYSE is proposing to rescind the current policy due to the decreasing importance of physical certificates, the technological enhancements in the automation of stock ownership records, and a recent rule filing by The Depository Trust Company (''DTC'') proposing to commence an electronic ''direct registration system'' (''DRS'').[2] DRS will provide a linkage between transfer agents, broker-dealers, and DTC and will allow an investor to move a stock position from a transfer agent to a broker-dealer in connection with a sale of that stock. As a condition to offering an issuer the choice of sending investors certificates or account statements for distribution other than DRIPs and DRSPPs, the proposed rule change would require the issuer to include its stock in a DRS. Such a DRS must be operated by a registered clearing agency and must be available for exchange-traded stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[2] In its original filing, DTC proposed that DRS be available only for issuers that, among other things, allows investors holding stock in ''street'' or nominee name to participate in a company's DRIP. Securities Exchange Act Release No. 37778 (October 3, 1996), 61 FR 52985. In an amendment to the filing, DTC deleted that eligibility requirement. Securities Exchange Act Release No. 37800 (October 9, 1996).

[3] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to rescind the NYSE's policy of requiring listed companies to provide registered holders with share certificates for all stock distributions except for DRIPs and DRSPPs. The NYSE is proposing to rescind this policy in light of changes in the securities marketplace, including the decreasing importance of physical certificates and the technological enhancements in the automation of stock ownership records. The NYSE also is acting in response to the DRS proposal of DTC.

With respect to changes in the marketplace, a declining number of shareholders hold stock certificates. Approximately seventy percent to eighty percent to all outstanding shares of issuers are held in ''street'' name whereby investors place their securities with a broker-dealer or bank, which registers the securities in its own name as nominee. Investors receive account statements evidencing their securities positions.

In addition, a growing number of investors hold securities through direct registration in their own names on the shareholder register but without receiving certificates. Such investors receive account statements from the issuer or its transfer agent. A major source of such holdings are DRIPs and DRSPPs with at least one thousand public companies are offering these plans.

Permitting listed companies, in effect, to offer their registered holders account statements in lieu of certificates is consistent with technological advancements in account management systems. Today, corporate issuers or their transfer agents maintain automated systems for recording stock ownership. The NYSE believes that registered holders should benefit from this automation and have the opportunity to forego certificates. This follows the practice in other securities markets where account statements are already commonplace, as in the case of securities issued by open-ended investment companies and by the U.S. Treasury Department.

Repealing the policy also is consistent with DRS. DRS will allow investors whose share ownership is recorded directly on the issuer's register the ability to transfer their stock positions electronically to a bank or broker-dealer in connection with a sale. DRS, which will begin with a pilot program later this year, is the result of two year's work.

Participating in these efforts were representatives of the Securities Transfer Association, Securities Industry Association, and the Corporate Transfer Association.

DRS will provide significant efficiencies in the processing of securities. In particular, it will facilitate the ability of a registered holder to deliver stock in time to settle a sale within the required three business days. More generally, it will limit the need for the physical transfer of paper certificates and thus will reduce risks, delays, and costs in the clearance and settlement process. For these reasons, the NYSE is proposing that as a condition to a listed company being able to offer registered holders the opportunity to receive account statements in lieu of stock certificates for distributions other than DRIPs and DRSPPs the company must include its stock in an available DRS.

Following the pilot period for DTC's DRS, the NYSE expects that DTC will expand DRS so that it will be available to all NYSE-listed companies. A listed company would need to take steps to meet all eligibility standards for a DRS. For DTC's proposed system this includes the requirement that the company have a transfer agent that participates in DTC's Fast Automated Transfer (''FAST'') program.

The proposed rule change is consistent with the requirements of the Act under Section 6(b)(5)[4] in that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has not solicited and does not intend to solicit comments on this proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to the file number SR–NYSE–96–29 and should be submitted by November 8, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26782 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f (1988).

[Release No. 34–37812; File No. SR–NYSE–96–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Six-Month Extension of Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

October 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 8, 1996, the New York Stock Exchange, Incorporated (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends for six months (until April 24, 1997) the pilot program most recently extended in Securities Exchange Act Release No. 37151 (April 29, 1996), 61 FR 20302 (May 6, 1996) (File No. SR–NYSE–96–10) (extending pilot until October 24, 1996.)[1] This is a program to calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] This program was originally filed as a pilot in Securities Exchange Act Release Nos. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (File No. SR–NYSE–95–35) and 36489 (November 16, 1995), 60 FR 58123 (November 24, 1995) (File No. SR–NYSE–95–37).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for six months a pilot program for calculating and displaying, on execution reports sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. The program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the ''NYSE PRIME[SM].''[2]

NYSE PRIME is available to all member organizations [3] for intra-day market orders entered via the Exchange's SuperDOT system that are not tick-sensitive and are entered from off the Floor.[4] In calculating the dollar value of price improvement, NYSE PRIME utilizes the Best Pricing Quote (''BPQ'') as approved by the Commission in connection with the Exchange's pricing of odd-lot orders.[5]

Data from the operation of the pilot during the first eight months of 1996 show price improvement on 26.3% of the execution reports for eligible post-opening market orders entered on the Exchange. The Exchange believes that the NYSE PRIME enhances the information made available to investors and improves their understanding of the auction market.

The most recent extension of the NYSE PRIME pilot program began on April 24, 1996 and continues until October 24, 1996. The proposed rule change extends the pilot program for an additional six months, to April 24, 1997.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an exchange have rules that are 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. This proposed rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competitions; and (iii) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the extension of the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (e)(5) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–28 and should be submitted by November 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26784 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[2] NYSE PRIME is a service mark of the New York Stock Exchange, Inc.

[3] The Commission notes that member organizations electing to receive NYSE PRIME information are required to enter into an agreement with the Exchange regarding the use of NYSE PRIME information and the NYSE PRIME service mark. Among other things, the agreement provides that in any publication or use of NYSE PRIME information (unless the Exchange otherwise agrees), the member organization must employ the NYSE PRIME service mark.

[4] Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (*e.g.*, switch orders) and orders diverted to sidecar.

[5] *See* Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (File No. SR–NYSE–90–06). The BPQ is the highest bid and lowest offer, respectively, disseminated by the Exchange or another market center participating in the Intermarket Trading System (''ITS'') at the time the order is received by the Exchange. In order to protect against the inclusion of incorrect or stale quotations in the BPQ, however, the Exchange includes quotations in a stock from other markets only if: (1) the stock is included in ITS in that other market; (2) the quotation size is for more than 100 shares; (3) the bid or offer is not more than one-quarter point away from the NYSE's bid or offer; (4) the quotation conforms to NYSE Rule 62 governing minimum variations; (5) the quotation does not create a locked or crossed market; (6) the market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and, (7) the quotation is ''firm'' pursuant to Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1, and the market's rules.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(5).

[Release No. 34–37799; File No. SR–PSE–96–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Use of Member Badges on, and the Admission of Visitors to, the Equity Floors of the Exchange

October 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder, notice is hereby given that on August 22, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') is proposing to amend its Equity Floor Procedure Advice (''EFPA'') 1–C relating to the use of Member badges on, and the admission of visitors to, the Equity Floors of the Exchange. The text of the proposed rule change is stated below, new text is italicized, deletions are in brackets:

* * * * *

EQUITY FLOOR PROCEDURE ADVICES

* * * * *

1–C

¶ 7610 Badges and Visitors on the [Equity] *Equities Trading* Floors

(i) Admission of Members

The security of individuals and proprietary trading information on the Equities Trading Floors requires the following provisions be adopted with respect to admission on the Trading Floor:

(a) [1] Admission to the Equities Trading Floors shall be by badge only.

(b) [2] Members working on the Equities Trading Floors who seek admission to a Floor without a badge must identify themselves at the reception desk and obtain a temporary badge.

(c) [3] Exchange employees working on the Trading Floor who seek admission to the Floor without a badge must be identified by the appropriate Equities Floor Manager, and issued a temporary badge.

(d) [4] Member Firm employees working on the Trading Floor seeking admission to the Floor without a badge must be identified by a Member with a badge, and issued a temporary badge.

(e) [5] Repeated failure of Members or Member Firm personnel to have a permanent badge on admission to the Trading Floor may subject the Member or Member Firm to *the following fines:* [a fine.]

1st Offense [$10.00] *$25.00*
2nd Offense [$25.00] *$50.00*
3rd Offense [$50.00] *$100.00*

(ii) Badge Transfers

(a) A Member may transfer his or her membership privileges to another person of the same Member Firm for one or more days, provided that the Member must first obtain the approval of the Exchange. A Member who allows another person to use that Member's badge for one full day or longer and who fails to obtain Exchange approval for such transfer will be subject to the following fines:

1st Offense $100.00
2nd Offense $250.00
3rd Offense $500.00

(iii) Admission of Visitors

(a) [6] Visitors must be the invited guests of Exchange Members or Exchange Officials. Visitors must be signed in at the reception desk by the inviting Member or staff personnel. Visitors will be issued a temporary badge to wear at all times while on the Floor. Visitors shall be accompanied at all times on the Floor.

(*b*) [7] Allied Members shall be considered visitors for the purposes of this Advice.

(*c*) [8] The Floor Trading Committee Members of each respective trading floor may restrict the access of any visitor to the Floor when the Committee Members deem that the visitor's presence interferes with orderly Floor procedures.

A Member who is responsible for a violation of these provisions on the admission of visitors will be subject to the following fines:

1st Offense $25.00
2nd Offense $50.00
3rd Offense $100.00

Violations of this Advice *1–C* shall be cumulative and the number of offenses for a violation of Equity Floor Procedure Advice 1–C shall be calculated on a twelve-month rotating basis. Therefore, a violation in January would be removed from the calculation in January of the following year.

* * * * *

¶6133 Minor Rule Plan

Rule 10.13 (a)–(h)—No change.

(i) Minor Rule Plan: Equity Floor Decorum and Minor Trading Rule Violations

(1)–(2)—No change.

(3) *Admission of Members to* [Use of Badges on] the Equity Floor. (EFPA 1–C*(i)*)

(4)–(9)—No change.

(10) Badge Transfers. (EFPA 1–C(ii))

(11) Admission of Visitors to the Equity Floor (EFPA 1–C(iii))

* * * * *

MINOR RULE PLAN, RECOMMENDED FINE SCHEDULE

* * * * *

Rule 10.13(i)

Equity Floor Decorum and Minor Trading Rule Violations [1]

[1] Fines for multiple violations of Equity Floor Decorum and Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

	1st viol.	2nd viol.	3rd viol.
(1)–(2)—No change.			
(3) *Admission of Members to* [Use of Badges on] the Equity Floor (EFPA 1–C(i))	[$10] *$25*	[$25] *$50*	[$50] *$100*
(4)–(9)—No change.			
(10) Badge Transfers (EFPA 1–C(ii))	$100	$250	$500
(11) Admission of Visitors to the Equity Floor (EFPA 1–C(iii))	[$10] *$25*	[$25] *$50*	[$50] *$100*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of such statements.

A. Purpose

EFPA 1–C currently sets forth the rules and procedures on the admission to the trading floor and the use of badges by Members. Violations of these rules may currently result in recommended fines of $10, $25 and $50 for first-, second- and third-time violations under the Exchange's Minor Rule Plan (''MRP'').[2]

The Exchange is proposing to modify EFPA 1–C and, correspondingly, the MRP in two respects. First, the Exchange is proposing to add a provision, entitled ''Badge Transfers,'' to EFPA 1–C, stating that a Member may transfer his or her membership privileges to another person of the same Member Firm for one or more days, provided that the Member must first obtain the approval of the Exchange.[3] The provision further states that a Member who allows another person to use that Member's badge for one full day or longer and who fails to obtain Exchange approval for such transfer will be subject to the following fines: $100 for first offense, $250 for a second offense and $500 for a third offense.[4]

Second, the Exchange is proposing to raise the recommended fines for violations of the provisions in EFPA 1–C relating to the Admission of Members and Admission of Visitors.[5] Accordingly, a Member (or Member Firm personnel) who repeatedly fails to have a permanent badge on admission to the Trading Floor will be subject to fines of $25 (first offense), $50 (second offense), and $100 (third offense).[6] In addition, a Member who is responsible for a violation of the provisions on the Admission of Visitors [7] will also be subject to fines of $25 (first offense), $50 (second offense), and $100 (third offense), under the proposed rule change.

B. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(6), in particular, in that it is designed to assure that Exchange members and persons associated with such members are appropriately disciplined for violations of the Rules of the Exchange.

III. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

IV. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

V. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–30 and should be submitted by November 8, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26714 Filed 10–17–96; 8:45 am]

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[2] *See* PSE Rule 10.13 (Procedures under the MRP); *see also* File No. SR–PSE–96–26 (pending proposal to grant Exchange staff the authority to make findings of violations and to impose monetary fines under the MRP).

[3] *See* Exchange Act Release No. 37373 (June 26, 1996), 61 FR 34918 (July 3, 1996) (approving proposal to establish a new fee of $50 for one-day transfers of membership, and noting that the fee for temporary intrafirm transfers of membership (i.e., transfers for a consecutive period lasting from two days to less than 30 days) is $100.

[4] Violations of EFPA 1–C are cumulative and the number of offenses for a violation of that Advice are calculated on a twelve-month rotating basis. Therefore, a violation in January would be removed from the calculation in January of the following year. *See* EFPA 1–C.

[5] These fines are currently $10, $25 and $50 for first, second and third violations, respectively.

[6] *See* Note 3, *supra.*

[7] These are specified in current subsections (6)–(8) of EFPA 1–C.

[Release No. 34–37810; File No. SR–PSE–96–09]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change by the Pacific Stock Exchange Incorporated and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to the Options Book Pilot Program

October 11, 1996.

I. Introduction

On April 1, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') submitted to 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] a proposal to establish a pilot program under which a limited number of lead market makers (''LMMs'') will be able to assume operational responsibility for the options public limit order book (''Book'') in certain options issues.[3] The Exchange filed an amendment (''Amendment No. 1'')[4] to the proposed rule change on June 4, 1996. The proposed rule change was published for comment in the Federal Register on June 27, 1996.[5] The Exchange filed a second amendment (''Amendment No. 2'') to the proposed rule change on October 3, 1996.[6] No comments were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

The Exchange proposes to amend its rules governing LMMs to allow approved LMMs to manage the Book function in certain designated options issues. The Exchange believes that the proposed rule change will give the Exchange greater flexibility in the operation of its lead market maker program (''LMM Program''). It will allow approved LMMs to have greater control over their operations on the Exchange floor. In particular, it will allow them to set rates for execution services provided to customers, in a manner similar to that exercised by options specialists at other exchanges and Designated Primary Market Markers at the Chicago Board Options Exchange. Accordingly, the Exchange believes that the rule change will make the PSE's LMM Program more competitive.[1]

The Book pilot program will be implemented on a limited basis, involving no more than three LMMs and no more than forty options symbols in total,[8] during a one-year pilot phase. No market maker cooperatives will be permitted to participate in the pilot.[9] The Exchange will evaluate the program, and, six months prior to its expiration, will determine whether to modify it and whether to seek permanent approval from the Commission. Under the pilot, the designated LMMs will manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.

The LMMs who participate during the pilot phase will be selected by the Options Floor Trading Committee based on some or all of the following factors: experience with trading an options issue as a market maker or LMM and willingness to assume LMM responsibilities; trading volume of the options issue(s); adequacy of capital; willingness to promote the Exchange as a marketplace; history of adherence to Exchange rules and securities laws; trading crowd/LMM evaluations conducted pursuant to Options Floor Procedure Advice B–13; and ability to manage the Book operation. Only dually- or multiple-traded options issues will be eligible during the pilot phase.

The Exchange proposes to amend its Rule 6.82 to provide that, subject to the approval of the Exchange, LMMs will be eligible to perform all functions of the Order Book Official (''OBO'') in designated options issues pursuant to Rules 6.51 through 6.59. In that regard, the Exchange will allow the LMM to use Exchange personnel to assist the LMM in performing the OBO function, and the Exchange will charge the LMM a reasonable fee for such use of Exchange personnel. If the program is made permanent, it is contemplated that LMMs would be responsible for hiring and maintaining their own employees, but the Exchange would provide employees to assist LMMs when necessary due to market conditions. Whether employed by LMMs or by the Exchange, however, employees working in the Book operation will be subject to all rules, policies, and procedures established by the Exchange. In addition, LMMs will be required to resolve trading disputes, subject to the review of two floor officials, upon the request of any party to such dispute. LMMs also will be required to disclose Book information to members upon request, pursuant to PSE Rule 6.57.

With regard to their duties as market makers, LMMs will be required to perform all obligations provided in Rules 6.35 through 6.40 and 6.82(c). In addition, in executing transactions for their own ''market maker'' accounts, LMMs will have a right to participate pro rata with the trading crowd in trades that take place at the LMM's principal bid or offer.

The proposal further provides that if the Options Allocation Committee decides to reallocate an options issue to the market maker system pursuant to PSE Rule 6.82(f)(i),[10] the terminated LMM may receive a proportionate share of the net Book revenues, not to exceed one-half, for any period specified by the Options Appointment Committee up to a maximum of five years. The decision to make an award will be based on various factors, including: the length of the time of LMM service, the LMM's capital commitment; efforts expended as LMM; activity level of the options issue when the LMM assumed responsibility for the Book function; and other relevant factors. The Exchange intends to develop a procedure for determining ''net Book revenues'' and specific guidelines for the Options Appointment Committee to follow in determining the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] An ''options issue'' refers to all types of options contracts (puts and calls) of the same class of options covering the same underlying stock. *See* PSE Rule 6.1(a) (7) and (10).

[4] Amendment No. 1 adds a provision to proposed PSE Rule 6.82, Commentary .05 stating that no market maker cooperatives may participate as LMMs in the pilot program. Amendment No. 1 also replaces a PSE Rule 6.82, Commentary .05 reference to ''April —, 1997'' as the proposed expiration date for the pilot program, with a reference to ''[Date]''. Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Michael Walinskas, Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated June 4, 1996.

[5] *See* Securities Exchange Act Release No. 37335 (June 19, 1996), 61 FR 33568.

[6] Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Janet Russell-Hunter, Special Counsel, Office of Market Supervision (''OMB''), Division of Market Regulation (''Division''), Commission, dated October 3, 1996. Amendment No. 2 clarifies the purpose of the proposal, amends proposed Rule 6.82(h) to change a reference to another part of the rule, and requests accelerated approval of Amendment No. 2.

[7] Amendment No. 2, *supra* note 6.

[8] Amendment No. 1, *supra* note 4.

Each options issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there usually would be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example, to a merger or stock split, in which case one additional symbol usually would be added.

[9] Amendment No. 1, *supra* note 4.

[10] In Amendment No. 2, the Exchange is making a technical correction to the proposal by changing the cross reference in proposed Rule 6.82(h)(1)(e) from (f)(2) to (f)(1). This change is being made to reflect a change in another filing, and accordingly, this change to the filing is not substantive. *See* Amendment No. 2, *supra* note 6. *See also* Securities Exchange Act Release No. 37780, (October 3, 1996) (approving changes to the LMM Program).

amount of net Book revenues, if any, to be awarded.

The proposal specifies that LMMs who perform the function of an OBO pursuant to PSE Rule 6.82(h) shall maintain ''minimum net capital,'' as provided in Rule 15c3–1 under the Act,[11] and also shall maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each options issue over five issues for which they perform the function of an OBO.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

III. Discussion

PSE Rule 6.82 (''LMM Rule'') sets forth the basic rules and procedures applicable to the LMM Program. The Commission notes that the LMM Program was adopted in January 1990 as a pilot program.[12] The Commission recently approved changes to the LMM Program that added several new substantive provisions to the LMM Rule and clarified and streamlined its existing provisions.[13] In addition, the pilot LMM Program recently was extended to September 30, 1997.[14] The Exchange is now proposing to establish a pilot program whereby LMMs will assume operational responsibility for the Book in a limited number of options issues.

After careful consideration, the Commission finds that the Exchange's proposal to create a limited pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange in that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest. Giving LMMs greater control over their operations on the Exchange floor may continue to enhance the PSE's LMM Program, thereby improving the market for listed options on the Exchange. The Book pilot program is approved for a one year period, to expire on October 31, 1997, unless extended or permanently approved.

The Commission finds in particular that the program will be implemented on a limited basis involving no more than three LMMs and no more than forty options symbols in total during a one-year pilot phase. The Commission finds the selection criteria for LMMs to participate in this limited pilot to be appropriate. The Commission finds consistent with the Act the requirement that any LMMs who perform the function of an OBO will be required to maintain minimum net capital pursuant to Rule 15c3–1 under the Act, as well as a cash or liquid asset position of at least $500,000, plus $25,000 for each options issue over five issues for which they perform the function of an OBO.[15] The Commission finds appropriate that no market maker cooperatives will be permitted to participate in the pilot.[16]

The Commission believes that the pilot contains adequate safeguards to permit proper Exchange oversight of the LMMs managing the Book function. Specifically, the Commission finds appropriate that LMMs will be designated as OBOs and perform OBO functions pursuant to Rules 6.51 through 6.59.[17] These functions include the OBO's duty to assist in the maintenance of a fair, orderly, and competitive market.[18] LMMs running the Book will be required to report to an Options Floor Official any unusual trading activity, transactions, or price changes, or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly, competitive market.[19] LMMs also will be required to disclose to members, upon request, the price and number of contracts which are bid below or that are offered above the Book information displayed pursuant to Rule 6.55.[20] The Commission also notes that the proposal incorporates the requirement that LMMs perform all market maker obligations provided in Rules 6.35 through 6.40 and 6.82(c).[21]

The Commission finds consistent with the Act that the proposal places additional obligations on LMMs, and provides for their support by the Exchange. The proposal includes a provision subjecting an LMM's resolution of a trading dispute to the review of two floor officials upon the request of any party to such dispute.[22] The proposal also requires the PSE, for a reasonable fee, to make available Exchange personnel to assist LMMs in their OBO functions, though if the pilot is permanently approved, LMMs may be responsible for hiring and maintaining their own employees. The Commission notes that employees working in the Book operation, whether employed by an LMM or the Exchange, will be subject to all rules, policies, and procedures established by the Exchange. Finally, the Commission finds that the LMM Rule contains adequate provisions to permit the Exchange to reassign one or more options issues in the event that an LMM has not performed its duties satisfactorily.[23]

The Commission finds appropriate the provision of the proposal permitting an LMM to receive a proportionate share of net Book revenues for a limited time, in the event that an options issue is reallocated to the market maker system.[24] The Commission finds that it is appropriate for the Exchange to have the discretion to determine what compensation, if any, an LMM should receive in the event of reallocation of an options issue.

The Commission notes that, pursuant to recent amendments to the LMM Rule, LMMs will be evaluated by the Options Allocation Committee at least semiannually.[25] Before the Book pilot program can be approved on a permanent basis, or further extended, however, the Exchange must provide the Commission, within 6 months prior to its expiration, with a report on the operation of the Book pilot program. Specifically, the PSE must submit an updated pilot program report by April 1997 that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) whether the PSE has reassigned any options issues traded pursuant to the pilot; and (4) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets.

The Committee finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of the publication of notice of filing thereof in the Federal Register because Amendment No. 2 does not change the substance of the proposal, rather, it clarifies the purpose for the proposal and makes a technical correction to the text of the proposed rule. In addition,

[11] 17 CFR 240.15c3–1

[12] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

[13] Securities Exchange Act Release No. 37780, *supra* note 10.

[14] *See* Securities Exchange Act Release No. 37767 (September 30, 1996).

[15] Proposed PSE Rule 6.82, Commentary .06.

[16] Amendment No. 1. *supra* note 4.

[17] *See* Proposed PSE Rule 6.82(h)(1)(a).

[18] *See* PSE Rule 6.53.

[19] *See* PSE Rule 6.54.

[20] *See* PSE Rule 6.57.

[21] Proposed PSE Rule 6.82(h)(2)(a).

[22] Proposed PSE Rule 6.82(h)(1)(c).

[23] *See* PSE Rule 6.82(f).

[24] Proposed PSE Rule 6.82(h)(1)(e).

[25] *See* PSE Rule 6.82(e)(4) and Securities Exchange Act Release No. 37780, *supra* note 10.

the PSE's proposal was published in the Federal Register for the full 21 day comment period without any comments being received by the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–09 and should be submitted by November 8, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–PSE–96–09), as amended, is approved through October 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26783 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.3—3(a)(12).

[Release No. 34–37813; File No. SR–PTC–96–05]

Self-Regulatory Organizations; Participants Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Establishing a New Category of PTC Participant

October 11, 1996.

On August 21, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–96–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] to establish a new category of PTC participant, a ''Federal Reserve participant.'' Notice of the proposal was published in the Federal Register on September 23, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The proposed rule change establishes a new category of PTC participant, a Federal Reserve participant, for Federal Reserve Banks.[3] The new category of participants will enable Federal Reserve Banks to maintain accounts at PTC for the purpose of accepting securities pledged as collateral by PTC participants for discount window advances from the Federal Reserve Banks. At a later date, PTC participants may be able to deliver securities to the accounts of Federal Reserve participants as collateral to secure Treasury tax and loan accounts.[4]

Following approval of this proposed rule change, PTC and the Federal Reserve Bank of New York (''FRBNY'') will commence a pilot program which will be open to a limited number of PTC participants. During the pilot program, PTC participants taking part in the pilot program will be able to deliver securities that meet the requirements of the FRBNY to the FRBNY's Federal Reserve participant's account to secure discount window advances. During the pilot program, PTC also will undertake software changes that may later permit pledges of Treasury tax and loan collateral and pledges of collateral by institutions that are not direct participants themselves but use PTC participants as custodians.[5]

Establishing the Federal Reserve participant as a category of participation will enable Federal Reserve Banks to participate in PTC in a capacity different from that of PTC's current participants or limited purpose participants.[6] Like limited purpose participants, Federal Reserve participants will be restricted from receiving securities versus payment and from incurring a debit balance. In addition, Federal Reserve participants will not receive principal and interest (''P&I'') advances on securities held at PTC and therefore are not required to repay third-party loans obtained for this purpose.[7]

Consistent with the restricted nature of Federal Reserve Bank participation, the proposed rule change also provides that Federal Reserve participants will be exempt from some of the obligations applicable to PTC's other participants and limited purpose participants.[8] The most significant exemptions applicable to Federal Reserve participants are that they are not required to: (1) Indemnify PTC or any licensor or provider of data processing services to PTC; (2) furnish periodic financial reports and open books and records for inspection by PTC; (3) pay fees, fines, or assessments; (4) contribute to the participants fund; or (5) submit disputes to arbitration.

Additional provisions of the proposed rule change are as follows. Securities and property in the account of a Federal Reserve participant are not subject to any lien, security interest, or ownership interest by PTC.[9] PTC shall not be liable to a Federal Reserve participant or any third party for losses arising from nonperformance or misperformance of the custody of deposited securities or its duties other than the custody of deposited securities except to the extent that such loss is attributable to the failure to exercise ordinary care by PTC or in the case of willful misconduct or fraudulent or criminal acts of PTC. PTC will not waive any of its rules or procedures without a Federal Reserve participant's consent if the effect of such

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37684 (September 16, 1996), 61 FR 49807.

[3] The new category of Federal Reserve participant will be governed by a new Section 2A to Rule 1 of Article IV of PTC's rules (''Qualifications and Duties of Participants and Limited Purpose Participants'') and by a new form of participation agreement for Federal Reserve participants.

[4] A financial institution can be designated as a Treasury tax and loan depository to process deposits of Federal taxes and to maintain and administer separate accounts known as Treasury tax and loan accounts. In order to accept these deposits, the financial institution must pledge collateral security to secure Treasury tax and loan balances with the Federal Reserve Bank of the district in which it is located. 31 CFR 202, 203.

[5] Many smaller institutions which cannot meet PTC's participants' requirements establish clearing arrangements with PTC participants in order to utilize PTC's services.

As necessary, PTC should submit a proposed rule change under Section 19(b) of the Exchange Act describing any modifications to the program which PTC plans to implement as a result of its review of the pilot program.

[6] Currently, PTC's rules permit participation as either a participant or as a limited purpose participant.

[7] Federal Reserve participants will not receive P&I through PTC because P&I on securities in a pledgee account is paid to the pledgor pursuant to PTC's rules.

[8] These exemptions are set forth in the new Section 2A to Rule 1 of Article IV of PTC's rules.

[9] Because securities held by PTC for the account of a Federal Reserve participant are held in pledgee accounts and transferred free into such accounts, this change is merely a restatement of PTC's existing rules, which provide that PTC does not have a lien, security interest, or ownership interest in securities held and transferred in this manner.

waiver would be to prejudice a Federal Reserve participant's rights.

II. Discussion

Section 17A(b)(3)(F)[10] of the Exchange Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. For the reasons set forth below, the Commission believes that PTC's proposed rule change is consistent with this obligation under the Exchange Act.

PTC was established in 1989 as a depository for mortgage-backed securities, primarily those guaranteed by the Government National Mortgage Association (''GNMAs''), in order to immobilize these securities and to allow them to be settled by book-entry. However, GNMAs, unlike other mortgage-backed securities such as those guaranteed by the Federal National Mortgage Association (''FNMAs'') and the Federal Home Loan Mortgage Association (''FHLMCs''), are issued in certificated form and therefore cannot be transferred over the Fedwire.

Currently, in order to use GNMAs as collateral for discount window advances from Federal Reserve Banks, PTC participants must physically remove the certificates from PTC and deposit them with the Federal Reserve Banks. The proposed rule change will enable Federal Reserve Banks to maintain accounts at PTC for the purpose of accepting from PTC participants securities pledged as collateral for discount window advances and as collateral to secure Treasury tax and loan accounts. This will allow PTC participants to utilize GNMAs as collateral without having to physically remove the certificates from PTC. As a result, the Commission believes the proposed rule change facilitates the safeguarding of securities in the custody or control of PTC by reducing the physical movement of GNMAs and the risk of loss associated with the physical movement of these securities. Furthermore, the Commission believes that the proposal is consistent with industry efforts to immobilize securities certificates and maximize efficiencies in securities processing.

As previously stated, the proposed rule change also provides that Federal Reserve participants will be exempt from some of the obligations applicable to participants and limited purpose participants. The Commission believes that the special provisions applicable to Federal Reserve participants are consistent with the restricted nature of the Federal Reserve Banks' participation at PTC.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit PTC and the FRBNY to immediately commence the pilot program. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal. In addition, the staff of the Board of Governors of the Federal Reserve System (''Board of Governors'') has concurred with the Commission's decision to grant accelerated approval.[11]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and in particular Section 17A of the Exchange Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (File No. SR–PTC–96–05) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26781 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] Telephone conversation between John Rudolph, Board of Governors, and Ari Burstein, Division of Market Regulation, Commission (October 3, 1996).

[12] 17 CFR 200.30–3(a)(12) (1996).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2906]

Texas; Declaration of Disaster Loan Area

Tyler County and the contiguous counties of Angelina, Hardin, Jasper, and Polk in the State of Texas constitute a disaster area as a result of damages caused by flooding that occurred on September 26 and 27, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 9, 1996 and for economic injury until the close of business on July 9, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155, or other locally announced locations.

The interest rates are:

For physical damage:

Homeowners with credit available elsewhere—8.000%.

Homeowners without credit available elsewhere—4.000%.

Businesses with credit available elsewhere—8.000%.

Businesses and non-profit organizations without credit available elsewhere—4.000%.

Others (including non-profit organizations) with credit available elsewhere)—7.125%.

For economic injury:

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%.

The number assigned to this disaster for physical damage is 290606. For economic injury the number is 922100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 9, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96–26765 Filed 10–17–96; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Initiation of a Review to Consider the Designation of Cambodia as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Cambodia for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Cambodia as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Cambodia meets the designation criteria of the GSP law and should be

designated as a beneficiary developing country for purposes of the GSP, which is provided for the Trade Act of 1974, as amended (19 U.S.C. 2461 *et. seq.*) (the Act). The designation criteria are listed in section 502 of the Act. Interested parties are invited to submit comments regarding the eligibility of Cambodia for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided to other developed countries, expropriation without compensation, enforcement of arbitral awards, support of international terrorism, and protection of internationally recognized worker rights. Other practices taken into account relate to the extent of market access for goods and services, investment practices and protection of intellectual property rights.

Comments must be submitted in 15 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., Room 518, Washington, DC 20506. Comments must be received no later than 5 p.m. on Monday, November 18, 1996. Information and comments submitted regarding Cambodia will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the document contains business confidential information, 15 copies of a nonconfidential version of the submission along with 15 copies of the confidential version must be submitted. In addition, the submission should be clearly marked ''confidential'' at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly market at the top and bottom of each and every page (either ''public version'' or ''non-confidential'').

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 96–26821 Filed 10–17–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–110]

Initition of Section 302 Investigation and Request for Public Comment; Practices of the Government of Brazil Regarding Trade and Investment in the Auto Sector

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The Acting United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Brazil concerning the grant of tariff-reduction benefits contingent on satisfying certain export performance and domestic content requirements. The United States alleges that these acts, policies and practices are inconsistent with certain provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the Agreement on Trade-Related Investment Measures (TRIMS Agreement), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), each administered by the World Trade Organization (WTO). USTR invites written comments from the public on the matter being investigated.

DATES: This investigation was initiated on October 11, 1996. Written comments from the public are due on or before noon on Thursday, November 14, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Karen Chopra, Deputy Assistant U.S. Trade Representative for the Western Hemisphere, (202) 395–5190, or Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act) (19 U.S.C. 2412(b)(1)), authorizes the USTR to initiate an investigation under chapter I of Title III of the Trade Act (commonly referred to as ''section 301'') with respect any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia,* the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

Investigation and Consultations

On October 11, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should initiated to determine whether certain acts, policies and practices of Brazil concerning trade and investment in the auto sector are actionable under section 301(a). Brazil has adopted since December 1995 a series of decrees that provide that manufacturers of automobiles may get reductions in duties on inputs and assembled vehicles if they maintain a specified level of local content, and export an offsetting amount of finished vehicles and parts and maintain specified ratios of imported to domestic capital goods and of imported to domestic inputs. Brazil also provides more favorable treatment to automobiles and auto parts from Argentina.

The USTR believes that these acts, policies and practices of Brazil are inconsistent with certain aspects of the GATT 1994, the TRIMs Agreement, and the SCM Agreement. In particular, the program appears to be inconsistent with the most-favored-nation treatment and national treatment provisions found in Articles I and III of the GATT 1994; the prohibition in Article 2 of the TRIMs Agreement on investment measures that are inconsistent with the national treatment and quantitative restriction provisions in the GATT 1994, and the prohibition on certain subsidies in Articles 3 and 28.2 of the SCM Agreement.

In August 1996 the USTR invoked WTO dispute procedures and held consultations with Brazil regarding its auto regime. As a result of these consultations, Brazil has agreed to enter into intensive talks with the United States. The goal of these talks is the removal of the discriminatory impact of the Brazilian practices on U.S. exports. Pending the outcome of these talks the USTR has decided pursuant to section 303(b)(1)(A) of the Trade Act to delay for up to 90 days requesting the consultations required under section 303(a) of the Trade Act for the purpose of ensuring an adequate basis for such consultations. Pursuant to section 303(b)(1)(B) of the Trade Act the time limitations for making the determinations required by section 304 of the Trade Act will be extended for the period of the delay.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Brazil which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Thursday,

November 14, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–110) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–110) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–26711 Filed 10–17–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Distribute and Request Comment on the National Airspace System (NAS) Architecture Version 2.0

AGENCY: Federal Aviation Administration (FAA).

ACTION: Distribute and request comment on the NAS Architecture, Version 2.0.

SUMMARY: The FAA Office of System Architecture and Program Evaluation has developed a revised version of the NAS Architecture. This proposed architecture, Version 2.0, is being formally coordinated with all segments of the FAA and the aviation community. The FAA, therefore, invites public comment.

DATE: Comments must be received on or before December 16, 1996.

ADDRESS: Comments may be mailed to: Federal Aviation Administration, Office of System Architecture and Program Evaluation, ATTN: ASD–1, 800 Independence Avenue, SW., Washington, DC 20591, or sent by facsimile to 202/358–5434.

SUPPLEMENTARY INFORMATION: The FAA Office of System Architecture and Program Evaluation invites public comment on the National Airspace System (NAS) Architecture. The NAS Architecture is a comprehensive plan for modernizing the NAS well into the 21st century through effective and efficient use of equipment, software, services, facilities, procedures, and resources.

Version 2.0 represents a proposed NAS Architecture through the year 2015. This proposed NAS Architecture is being coordinated within the FAA and with the entire aviation community with the goal of establishing a baseline NAS Architecture (Version 3.0) in 1997.

In developing Version 2.0, the NAS architects faced the challenge of accommodating the forecasted increase in airspace usage while addressing the issues of an aging NAS infrastructure and shrinking Federal budgets. Version 2.0 strives to balance users' needs and the realities of technology and funding availability. This Architecture incorporates comments to the prior release (Version 1.5, issued in February 1996).

For more information on Version 2.0, please visit the NAS Architecture Home Page (http://asd.orlab.faa.gov) or write to the Federal Aviation Administration, Office of System Architecture and Program Evaluation, ATTN: ASD–1, requesting the Version 2.0 document.

A comment form is included in the Version 2.0 document. Feedback is encouraged. While the FAA cannot guarantee a response to each and every comment received, each comment that is received by December 16, 1996, will be considered in developing the next version of the NAS Architecture.

Issued in Washington, DC, on October 11, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–26823 Filed 10–17–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 18, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter L. Drahn, Airport Director of the County of Dane, Madison, WI at the following address: 4000 International Lane, Madison, WI 53704–3120. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Dane under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 23, 1996 the FAA determined that the application to use the revenue from a PFC submitted by County of Dane was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 24, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–02–U–00–MSN.

Level of the PFC: $3.00.

Actual charge effective date: 9/1/93.

Revised estimated charge expiration date: 4/30/2000.

Revised total PFC revenue: $9,558,000.

Brief description of proposed project(s): Construct Runway 3/21.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Dane.

Issued in Des Plaines, Illinois on October 10, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–26822 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: 49 U.S.C. Section 5334(g) [formerly called Section 12(k) of The Federal Transit Act], permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the City of New Smyrna Beach intends to transfer a two-bay addition to the existing Fleet Maintenance Facility and four-post bus lift, located at 124 Industrial Park Drive, New Smyrna Beach, Florida.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Region IV office of its interest by November 18, 1996.

ADDRESSES: Interested parties should notify the Regional Office by writing Ms. Susan E. Schruth, Regional Administrator, Federal Transit Administration, 1720 Peachtree Road NW, Suite 400, Atlanta, GA 30309–2437.

FOR FURTHER INFORMATION CONTACT: Mr. Brian A. Glenn, Program Manager, at 404/347–1889, or Ms. Ann Catlin, Real Estate Specialist, Office of Program Management, at 202/418–8552.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. Section 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

49 U.S.C. Section 5334(g) DETERMINATIONS:

(A) the asset will remain in public use for not less than 5 years after the date of the transfer the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(g) [formerly referenced as Section 12(k) of the Federal Transit Act, now codified]. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g) (1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The six-year-old metal clear-span garage bay is 21′ × 70′ with 14′ overhead doors at each end of the bay and a 10′ overhead door and a pedestrian door located in the middle of the building. The six-year-old lift is a Grand Model #TR–10–A 4-post 25,000 lb. lift with two (2) three-foot track extensions attached to a 20′ × 70′ foot concrete slab.

Issued on October 8, 1996.

Susan E. Schruth,

Regional Administrator.

[FR Doc. 96–26745 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–57–U

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on October 11, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	11/30/1996
10664–N	EFIC Corporation, San Jose, CA	3	11/30/1996
10915–N	Luxfer USA Limited, Riverside, CA	3	11/30/1996
10945–N	Structural Composites Industries, Pomona, CA	3	11/30/1996
11193–N	U.S. Department of Defense Falls Church, VA	4	12/31/1996
11194–N	Pressure Technology, Inc., Hanover, MD	3	12/31/1996
11302–N	Stolt Tank Containers Limited, Hull, North Humberside, EN	1	11/30/1996
11322–N	Hydra Rig, Inc., Ft. Worth, TX	1	12/31/1996
11375–N	Oceaneering Space Systems, Houston, TX	4	12/31/1996
11396–N	Laidlaw Environmental Services, LaPorte, TX	4	12/31/1996
11409–N	Pure Solve, Inc., Irving, TX	4	12/31/1996
11411–N	National Propane Gas Association, Arlington, VA	1, 3	11/30/1996
11442–N	Union Tank Car Co., East Chicago, IN	4	12/31/1996
11443–N	Hercules Inc., Wilmington, DE	4	11/30/1996
11450–N	Coast Gas Inc., Bakersfield, C	4	12/31/1996
11465–N	Monsanto Co., St. Louis, MO	4	11/30/1996
11466–N	Monsanto Co., St. Louis, MO	4	12/31/1996
11470–N	North East Chemical Corp., Cleveland, OH	4	11/30/1996
11491–N	P.M. Industrial Gas Ltd., Georgetown	1	11/01/1996
11505–N	Manchester Tank, Brentwood, TN	4	11/01/1996
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	11/30/1996
11523–N	Bio-Lab, Inc., Conyers, GA	4	11/30/1996
11527–N	Technical Service Co., Long Beach, CA	4	11/30/1996
11537–N	Babson Bros. Co., Romeoville, IL	4	11/30/1996
11538–N	Process Engineering, Plaistow, NH	4	11/30/1996
11540–N	Convenience Products, Fenton, MO	1	11/30/1996
11541–N	Kaiser Compositek, Brea, CA	3	11/30/1996
11542–N	Sunrise Supply Enterprises, Ltd., Albuquerque, NM	4	11/30/1996
11559–N	Japan Oxygen, Inc., Long Beach, CA	4	11/30/1996
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	11/30/1996
11565–N	C.P.F. Dualam Inc., Gatesville, TX	4	11/30/1996
11572–N	North American Biologicals, Inc., Miami, FL	4	11/30/1996
11578–N	General Alum & Chemical Co., Searsport, MA	4	11/15/1996
11583–N	Alaska Railroad Corp., Anchorage, AL	4	12/31/1996
11586–N	Chem Coast Inc., La Porte, TX	4	11/15/1996
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	12/31/1996
11592–N	Amtrol Inc., West Warwick, RI	4	12/31/1996
11593–N	Johnson & Johnson, Skillman, NJ	4	11/01/1996
11597–N	Zeneca, Inc., Wilmington, DE	4	11/30/1996
11598–N	Metalcraft Inc., Baltimore, MD	4	12/31/1996
11599–N	Haviland Products Co., Grand Rapids, MI	1	12/31/1996
11606–N	Safety-Kleen Corp., Elgin, IL	4	12/31/1996
11609–N	Rubbermaid Commercial Products Inc., Winchester, VA	4	12/31/1996
11615–N	Allied-Signal Aerospace Co., Kansas City, MO	4	13/31/1996
11621–N	Aerojet Industrial Products, North Las Vegas, NV	4	12/31/1996
11622–N	Monsanto Co., St. Louis, MO	4	11/01/96
11625–N	Exxon Chemical Co., Baytown, TX	4	12/31/96
11626–N	DeVilbiss Health Care, Inc., Ft. Pierce, FL	4	11/01/96
11627–N	Cabot Corporation, Revere, PA	4	12/31/96
11631–N	Health Care Incinerators, Fargo, ND	4	12/31/96
11644–N	United States Can Company, Elgin, IL	4	1/31/97
11645–N	Chemical Products Corp., Cartersville, GA	4	1/31/97
11646–N	Barton Solvents Inc., Des Moines, IO	4	1/31/97
11647–N	Taylor-Wharton Co., Harrisburg, PA	4	1/31/97
11648–N	Ill. Dept. of Nuclear Safety, Springfield, IL	4	1/31/97
11649–N	VTG USA, Inc., West Chester, PA	4	1/31/97
11653–N	Phillips Petroleum Co., Bartlesville, OK	4	1/31/97
11654–N	Hoechst Celanese Corp., Dallas, TX	4	1/31/97
11662–N	FIBA Technologies, Inc., Westboro, MA	4	1/31/97
11663–N	Pfizer Inc., Groton, CT	4	1/31/97
11664–N	Breed Technologies, Inc., Lakeland, FL	4	1/31/97
11666–N	UCar International Inc., Danbury, CT	4	1/31/97
11667–N	Weldship Corp., Bethlehem, PA	4	2/15/97
11668–N	AlliedSignal, Inc., Morristown, NJ	4	2/15/97
11669–N	Ciba-Geigy Corp., Tarrytown, NJ	4	2/15/97
11670–N	Oilphase Sampling Services Limited, Dye, Aberdeen, Scotland	4	2/15/97
11671–N	Matheson Gas Products, Secaucus, NJ	4	2/15/97

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	4	11/30/1996
5493–M	Montana Sulphur & Chemical Co., Billings, MT	4	11/30/1996
6117–M	Montana Sulphur & Chemical Co., Billings, MT	4	11/30/1996
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	12/31/1996
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	12/31/1996
9706–M	Taylor-Wharton, Harrisburg, PA	4	12/31/1996
9778–M	Western Atlas International, Houston, TX	4	12/31/1996
9909–M	Taylor-Wharton, Harrisburg, PA	4	12/31/1996
9926–M	Implementos Agricolas LaLa, S.A., S.A. Durango, ME	4	12/31/1996
10511–M	Schlumberger Technology Corporation, Houston, TX	4	12/31/1996
10517–M	Nalco Chemical Co., Naperville, IL	4	11/30/1996
10962–M	International Compliance Center Ltd., Niagara Falls, NY	4	12/31/1996
11005–M	Pressure Technology, Inc., Hanover, MD	4	12/31/1996
11055–M	Rollis Chempak Inc., Wilmington, DE	4	11/30/1996
11055–M	Rollins CHEMPAK Inc., Wilmington, DE	4	11/30/1996
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	12/31/1996
11171–M	Dart Container Corp. of PA, Leola, PA	4	12/31/1996
11248–M	HAZMATPAC, Houston, TX	4	11/30/1996
11321–M	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	4	11/30/1996

[FR Doc. 96–26746 Filed 10–17–96; 8:45 am]

BILLING CODE 4910–60–M

Corrections

Federal Register
Vol. 61, No. 203
Friday, October 18, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-9-000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–25856 appearing on page 52930 in the issue of Wednesday, October 9, 1996, the docket line should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-398-000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–25852 appearing on page 52935 in the issue of Wednesday, October 9, 1996, the docket line should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-400-000 and RP89-183-064]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 96–25854 appearing on page 52936 in the issue of Wednesday, October 9, 1996, the docket line should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Part 1212

RIN 2105-AC-59

Revision of Department of Transportation Regulations; Correction

Correction

In rule document 96–25884 appearing on page 53677 in the issue of October 15, 1996, make the following correction:

PART 1212—[CORRECTED]

On page 53677, in the third column, in amendatory instruction 10., remove the period (.) after ''above'' and insert '', and the part is removed and reserved.''

BILLING CODE 1505–01–D

Federal Register

Friday
October 18, 1996

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 5, et al.
Combined Income and Rent; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 5, 200, 236, 813, 913, 950, and 960

[Docket No. FR–3324–F–04]

RIN 2501–AB61

Combined Income and Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: On April 5, 1995 (60 FR 17388), HUD published an interim rule amending its regulations governing public housing, Indian housing, and assisted housing programs by adding nine exclusions to the definition of annual income. The interim rule also added provisions that implement a statutory change to the definition of adjusted income for the Indian housing program, and made two technical corrections to the existing regulations. This rule finalizes the policies and procedures set forth in the April 5, 1995 interim rule and takes into consideration the public comments received on the interim rule. Further, this rule consolidates the nearly identical provisions of 24 CFR parts 813 and 913 into a new subpart F of part 5.

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: For Public Housing, Section 8 Certificates, Vouchers and Moderate Rehabilitation: Linda Campbell, Room 4206, telephone number (202) 708–0744; For Native American Programs: Deborah Lalancette, Room B–133, telephone number (202) 755–0088; For Housing: Barbara D. Hunter, Room 6182, telephone number (202) 708–3944; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Hearing- or speech-impaired individuals may access these telephone numbers by calling the Federal Information Relay Service TTY at 1–800–877–8339. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in §§ 5.607 and 5.617 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control numbers 2502–0204 and 2577–0083. *An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.*

II. The April 5, 1995 Interim Rule

On April 5, 1995 (60 FR 17388), HUD published for public comment an interim rule amending HUD's regulations governing public housing, Indian housing, Section 8 housing, and other assisted housing programs by adding nine exclusions to the definition of annual income. Specifically, the interim rule excluded from annual income the following: (1) Resident service stipends; (2) adoption assistance payments in excess of $480 per adopted child; (3) student financial assistance; (4) earned income of full-time students, except the family head or spouse, in excess of $480 per student; (5) adult foster care payments; (6) compensation from State or local job training programs and training of resident management staff; (7) property tax rebates; (8) homecare payments for developmentally disabled children or adult family members; and (9) deferred periodic amounts of supplemental security income and social security benefits received in a lump sum or in periodic amounts.

With regard to the first eight exclusions to the definition of income, the Secretary merely exercised the discretion conferred upon him to define family income by section 3(b)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the 1937 Act), section 101(c)(2) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(c)(2)), and section 236(m) of the National Housing Act (12 U.S.C. 1701 *et seq.*). HUD believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing.

The ninth exclusion to the definition of annual income was statutorily mandated. Section 103(a)(1) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1993) (1992 HCD Act) amended section 3(b)(4) of the 1937 Act to exclude from annual income, ''any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7)).'' Section 1613(a)(7) of the Social Security Act covers deferred periodic payments received in a lump sum or in prospective monthly amounts from supplemental security income (SSI) and social security benefits.

The April 5, 1995 interim rule also amended the definition of adjusted income for Indian Housing programs by allowing a deduction for both child care expenses and excessive travel expenses, as required by section 103(a)(2) of the 1992 HCD Act. Finally, the interim rule made two technical corrections to HUD's existing regulations at 24 CFR parts 236 and 913. The April 5, 1995 interim rule described in detail the amendments to HUD's regulations.

III. Summary of Changes to the April 5, 1995 Interim Rule

The public comment period on the interim rule expired on June 5, 1995. A total of 12 comments were received. This final rule makes one change in response to public comment. Specifically, it amends the exclusion on compensation received from State or local job training programs to cover only incremental increases in income. HUD also determined that it was necessary to make several other revisions to the April 5, 1995 interim rule. For example, this rule consolidates and streamlines the nearly identical requirements of 24 CFR parts 813 and 913. This rule also revises the definitions of the terms ''dependent'' and ''child care expenses.''

The following section of the preamble describes the changes made by this final rule to the April 5, 1995 interim rule. The change made in response to public comment is discussed in section V of this preamble, which presents a summary of the significant issues raised by the public commenters on the April 5, 1995 interim rule, and HUD's responses to these comments. Section VI of the preamble discusses recent statutory requirements established by the Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996). Finally, section VII describes a correction made by this rule to the authority citations in 24 CFR part 5.

IV. Changes to the April 5, 1995 Interim Rule

A. Parts 215 and 236

In response to President Clinton's regulatory reform initiative, HUD conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. As a result of this review, HUD, in a separate rulemaking, has removed 24 CFR part 215 and subpart A of 24 CFR part 236. (61 FR 14396, April 1, 1996.)

Part 215 codified HUD's Rent Supplement Payments Program. New rent supplement contracts were no longer authorized under the program. Accordingly, HUD has removed these obsolete provisions from title 24 of the Code of Federal Regulations. All of the existing projects and rent supplement contracts remain subject to the part 215

regulations through a savings clause contained in new § 200.1301.

Part 236 pertains to Mortgage Insurance and Interest Reduction Payments for Rental Projects. A moratorium on the issuance of commitments to insure new mortgages under part 236 was imposed on January 5, 1973. HUD has therefore removed subpart A of part 236 and replaced it with a savings clause.

The April 5, 1995 interim rule amended 24 CFR part 215 and subpart A of 24 CFR part 236 to add the nine new exclusions to annual income. Due to HUD's regulatory reform efforts, this rule finalizes these amendments by establishing new §§ 200.1303 and 236.3. These new sections make the annual income exclusions established by this final rule applicable to those program participants still subject to the requirements of 24 CFR part 215 and subpart A of 24 CFR part 236.

B. Consolidating Parts 813 and 913

1. Consolidation of Regulatory Requirements

The provisions of 24 CFR parts 813 and 913 are virtually identical. These two parts establish the definitions of ''annual income'', ''adjusted income'', and ''total tenant payment'', along with other related definitions and requirements for assistance under the 1937 Act. Part 813 applies to assistance administered under Section 8 of the 1937 Act. The requirements of part 913 apply to HUD's public housing programs. On February 9, 1996 (61 FR 5198), HUD, as part of its continuing regulatory-reform efforts, published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. On February 13, 1996 (61 FR 5662), HUD published a final rule consolidating 24 CFR parts 812 and 912 in a new subpart D to part 5. Parts 812 and 912 described nearly identical general requirements for assistance under the 1937 Act. As was the case with parts 813 and 913, these requirements were originally set forth in separate parts of title 24 designated for different forms of assistance under the 1937 Act.

This final rule takes the next logical step in HUD's regulatory reinvention efforts by consolidating parts 813 and 913 in a new subpart F to 24 CFR part 5. Consolidation of these provisions in part 5 will eliminate redundancy in title 24 and assist in HUD's efforts to streamline the content of its regulations.

As a result of the consolidation of parts 813 and 913, this final rule makes a conforming amendment to 24 CFR part 960. Part 960 sets forth HUD's requirements for the admission to, and occupancy of, public housing. Section 960.208 repeats the utility reimbursement provisions currently located in 24 CFR part 913. This final rule amends § 960.208 to cross-reference to the consolidated requirements of new § 5.615.

2. Updated Introduction to the Definition of Annual Income

HUD's definition of ''annual income'' is currently set forth at §§ 813.106 and 913.106, and is consolidated by this rule at § 5.609. This final rule updates and clarifies the introductory paragraph of this definition, which presents an overview of annual income. For example, the revised introductory text now states that annual income includes amounts ''monetary or not'' that go to ''or on behalf of'' a family member and are received ''from a source outside the family.'' These revisions do not signify a change in HUD's policy. Rather, the changes reflect the interpretation of annual income under which HUD and Public Housing Agencies (PHAs) are currently operating. Since the original publication of parts 813 and 913, HUD's day-to-day administration of these regulatory requirements has resulted in the clarification and interpretation of the definition of annual income. The changes made by this final rule merely update the definition to incorporate these clarifications.

3. Elimination of Unnecessary Regulatory Provisions

This rule also removes redundant or obsolete regulatory provisions from 24 CFR parts 813 and 913. For example, although parts 813 and 913 originally became effective on July 1, 1984, HUD chose to delay implementation of the definitions of ''annual income'' and ''adjusted income'' until October 1, 1984. Accordingly, §§ 813.110 and 913.110 set forth extensive transition provisions concerning the initial implementation of these definitions. These provisions have become obsolete and are not included in new 24 CFR part 5, subpart F.

Paragraphs (b) and (c) of § 913.107 set forth the total tenant payment provisions for public housing families whose initial lease was effective before August 1, 1982. These regulatory provisions require the gradual phasing-in of the total tenant payment established in 24 CFR 913.107(a) for public housing families whose initial lease was effective before August 1, 1982. There is a very small number of public housing families to whom these phase-in provisions might still apply. Accordingly, HUD has decided not to include these provisions in subpart F of 24 CFR part 5. However, new § 5.613 contains a savings clause which states that the total tenant payment phase-in provisions will continue to be applicable to public housing families whose initial lease was effective before August 1, 1982.

This rule also removes provisions which merely repeat statutory language and replaces them with a citation to the specific statutory section. It is unnecessary to repeat statutory requirements in the CFR, since these requirements are otherwise accessible and binding. Furthermore, regulatory provisions which reiterate statutory language must be updated each time Congress amends the statute. Accordingly, this final rule replaces the total tenant payment provisions located at paragraph (a) of §§ 813.107 and 913.107, and now consolidated at § 5.613, with a cross-reference to the identical language in the 1937 Act.

This rule also eliminates unnecessary repetition by removing the definitions of terms that are already defined in the 1937 Act or in part 5 and replacing them with simple cross-references.

4. Nonapplicability to HUD's Indian Housing Regulations

New 24 CFR part 5, subpart F does not incorporate the similar requirements for HUD's Indian housing programs. The Indian housing provisions continue to be set forth in 24 CFR part 950.

C. Revised Definitions of the Terms ''Child Care Expenses'' and ''Dependent''

This final rule also revises the definitions of the terms ''dependent'' and ''child care expenses.'' These amendments are necessary to clarify the exclusions to annual income established by the April 5, 1995 interim rule.

Sections 813.102, 913.102, and 950.102 currently define the term ''adjusted income'' to mean annual income less certain specified deductions. One of the permitted deductions is for ''child care expenses'' necessary to enable a family member to be gainfully employed or to further his or her education. The amount deducted, however, may not exceed the amount of income received from the employment made possible by the child care expense.

The April 5, 1995 interim rule amended the definition of annual income to exclude earned income of full-time students, other than the family head or spouse, in excess of $480. Under the current regulations an employed full-time student would be

able to deduct the full amount of the earned income made possible by a child care expense, despite the fact that most of these earnings are already excluded from annual income. This final rule amends the definition of ''child care expenses'' to limit the deduction to the amount of employment income that is included in annual income.

The rule makes a second change to the definition of ''child care expenses.'' As explained above, the only child care expenses which are currently excluded from annual income are those which permit a family member to be gainfully employed or to further his or her education. This final rule expands the scope of the definition to include those child care expenses which are necessary to permit a family member to actively seek employment. The revised definition will empower low-income families and broaden the economic opportunities which are available to them. Specifically, this change will provide family members with the additional flexibility they may require to obtain gainful employment.

Family members are also permitted to deduct $480 for each ''dependent.'' The definition of ''dependent'' excludes foster children. This is due to the fact that child foster care payments are already excluded from annual income. If HUD were to treat foster children as dependents, a family would be able to deduct the foster child payments which are already excluded from annual income. The April 5, 1995 interim rule excluded adult foster care payments from the definition of annual income. However, HUD inadvertently failed to amend the definition of ''dependent'' to exclude foster adults. This final rule corrects the oversight.

V. Discussion of Public Comments on the April 5, 1995 Interim Rule

A. General Comments on the Interim Rule

1. Rule Will Reduce Revenue

Comment. Two commenters were concerned about the drop in rent-generated revenue Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) (collectively referred to as HAs) would experience as a result of the April 5, 1995 interim rule. The commenters believed that the overall effect of the rule would be to reduce HA revenue.

HUD Response. HUD recognizes that in the short-term, these exclusions will reduce the revenues an HA receives from rent. HUD believes that any short-term loss in rental income will be offset by the long-term benefits of retaining higher income families in occupancy. These exclusions are designed to benefit working families and families in transition from welfare to work. Many of the exclusions are temporary in nature, and others exclude only a portion of the family's income, with the remainder being considered in determining rent.

2. Administration of the Rule Presents Difficulties

Comment. One commenter believed the April 5, 1995 interim rule created administrative difficulties by not specifying that HAs implement the rule in the course of their normal annual review cycles. The commenter recommended that HUD permit HAs to make any required rental adjustments in the course of the first regular reexamination after the final rule's effective date.

The commenter also urged that the effective date of the final rule be set at the first day of the month. The April 5, 1995 interim rule had an effective date of May 5, 1995. The commenter believed that establishing the effective date at the first of the month would eliminate the computational problems resulting from the need to prorate a rent change for a partial month.

HUD Response. HUD has decided not to adopt the commenter's suggestions. Like the interim rule, this final rule requires that HAs amend their policies to incorporate all the required changes, and that HAs must then make whatever retroactive adjustments are necessary for families that have applied, been admitted, or been reexamined since the rule's effective date. Historically, HUD has implemented all changes to the definition of income in such a manner, so that the maximum benefit of the changes are realized.

However, HAs have the discretion to apply the exclusions to rent paid as of June 1, 1995 when determining retroactive payments. Since the April 5, 1995 interim rule was effective May 5, 1995, it is reasonable for HAs to make adjustments to rent as of June 1, 1995.

3. Formula Should Be Used To Determine Income Exclusion

Comment. One of the commenters believed that the April 5, 1995 interim rule should be revised to include an income exclusion formula. The commenter believed that such a formula could allow an initial fifty percent (50%) exclusion for income affiliated with each exclusionary item, but have each of the remaining sources of income tied to weighted percentages. The commenter suggested that the percentages be established according to the value of the subsidy in its importance toward elevating the tenant or resident from dependence to total independence. The initial 50% exclusion when added to the other income sources could equal a 110% exclusion.

HUD Response. The suggested method is not in keeping with HUD's goals of both assisting families and providing HAs with less regulation. Additionally, such a formula would be administratively burdensome.

4. Rule Should Take Short-Term Employment Into Account

Comment. One of the commenters believed the April 5, 1995 interim rule unfairly penalized tenants taking advantage of short-term employment opportunities, such as those provided in occasional construction related jobs. The commenter pointed out that these opportunities did not fall under either the interim rule's definition of resident service stipends or employee training programs. The commenter recommended that the interim rule be amended to provide direction to HAs on how to treat income from these types of programs.

HUD Response. One of the goals of this final rule is to foster full-time, long-term employment by supporting a number of efforts, primarily training and education. Short-term employment only continues the dispiriting welfare-work-welfare cycle HUD has observed for many residents. HUD hopes that this rule will assist HAs in adding a training component to their existing efforts to create employment opportunities for residents. In many cases, only through additional training and education will long-term employment become a viable option.

5. Rule Should Not Apply to Section 8 Housing

Comment. One commenter believed that the income exclusions established by the April 5, 1995 interim rule should not apply to Section 8 housing. The commenter pointed out that public housing is not profit driven and the operating income is determined by tenant rent and performance funding subsidy. The commenter stated that Section 8 housing is profit driven and not dependent on tenant income. According to the commenter, this difference justifies denying the income exclusions to Section 8 housing residents.

HUD Response. The objective of this rule is to assist low income families. Accordingly, as the rule is directed to families and not programs, it would be inappropriate to limit benefits based on the program in which a family is assisted.

B. Comments on Specific Income Exclusions

1. Resident Service Stipend

Comment. The April 5, 1995 interim rule provided for the exclusion of resident service stipends from annual income. However, the rule limited the exclusion to stipends that did not exceed $200 per month. Furthermore, the interim rule permitted only one resident service stipend per family member.

One commenter wrote that the interim rule's resident service stipend provisions created contradictory incentives for families. The commenter believed the provision was over-inclusive because it encouraged a single family to accumulate as many deductible ''stipend'' positions as family members. On the other hand, the commenter believed the provision was under-inclusive because it penalized individual residents who provided part-time services for which appropriate compensation might have exceeded $200 per month. The commenter suggested that the interim rule be amended to permit the first $200 of any resident service stipend to qualify for the exclusion. The commenter also felt the one stipend per family member limitation was ''unnecessarily restrictive'' and ''administratively burdensome.''

A second commenter believed the resident service stipend exclusion was vague. The commenter wrote that the interim rule neglected to address exactly how the resident service stipend would be documented. The commenter wondered whether a contract would be required for the resident service and whether board members would qualify for payment of services.

HUD Response. The intent of the resident service stipend exclusion is to exclude the stipends received by residents for performing a service, on a part-time basis, that enhances the quality of life in a housing development. Such services include, but are not limited to: fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, etc.

The parameters of the exclusion (i.e., the $200 limitation, the one exclusion per family member restriction, and permitting the exclusion for as many family members that are eligible) were developed to ensure that the exclusion is utilized by residents who are truly performing a *service* for the development, and not actually *working* for the development without the benefits of legitimate employment (compensation based on wage rates, benefits, tax contributions, etc.). The $200 limit was established because, based on existing minimum wage rates and standard definitions of full-time and part-time employment, if a development is paying a stipend in excess of $200 a month it may need to determine whether a wage-employment arrangement would be more appropriate than a stipend-for-service one. Further, HUD wishes to encourage all residents to contribute positively to their community, even if the residents are members of one family.

In response to the commenter who believed the resident stipend exclusion was vague, HUD notes that it is the responsibility of the individual HAs to establish such matters as whether a contract is required for resident services and whether board members qualify for payment for such services.

The resident stipend exclusion has successfully been in effect since its inclusion in a final rule published by HUD on August 24, 1994 (59 FR 43622). The April 5, 1995 interim rule only made a technical correction to the resident stipend income exclusion, expanding the scope to include all residents and not just resident leaders. Further, HUD wishes to note that neither the April 5, 1995 interim rule nor this final rule modify the existing exclusion of income earned by children (including foster children) under 18 years of age.

2. Adoption Assistance

Comment. The April 5, 1995 interim rule excluded payments received for the care of adopted children to the extent that the payments exceeded $480 per adopted child. One commenter believed this provision discouraged adoption. Specifically, the commenter pointed out that the April 5, 1995 interim rule, when read in conjunction with HUD's definition of ''adjusted income'' at 24 CFR 813.102 and 913.102, treated the family with adopted children and the otherwise identical family with foster children as having the same ''adjusted income'' and, therefore, required both to pay the same rent. However, the commenter also noted that for the purpose of determining whether the family qualified for eligibility as a ''low income'' or ''very low income'' family under §§ 813.105 or 913.105, or whether the family qualified for a rent-hardship preference under §§ 960.215 or 982.213, the first $480 of adoption subsidy payments would have been included in annual income whereas the first $480 of foster-care payments would have been excluded from annual income.

The commenter recommended that the April 5, 1995 interim rule be amended to exclude the full amount of adoption subsidy payments. The commenter also suggested that HUD modify the definition of ''dependent'' to exclude ''children for whom the family receives an adoption subsidy payment'', as well as foster children.

Another commenter feared that the adoption assistance exclusion lent itself to abuse by unscrupulous persons who might adopt multiple children as a means of obtaining extra income. This commenter believed the exclusion should be limited to one adopted child per family.

The second commenter also believed that the adoption assistance exclusion was vague concerning necessary documentation. The commenter suggested that the interim rule be amended to list the documents required for verification of the adoption assistance payments.

HUD Response. Adopted children already receive a $480 dependent deduction when adjusted income is calculated for purposes of determining rent. If the remaining $480 of earned income is excluded from annual income, the net effect, per adopted child, would no longer be $0, but rather would become $(480). Further, HUD does not believe that, in most instances, $480 will change whether or not a family is eligible under the existing income limits. Also, HUD has little discretion to change the definition of dependent, as the definition of adjusted income is statutory.

In response to the second commenter, it is the responsibility of the family social service agency to ensure that the family adopting the child is able to care for the child appropriately, and is not merely adopting the child for some monetary gain. Limiting the exclusion to one adopted child per family could potentially cause problems, especially where families are adopting children who are siblings who need to remain together.

Finally, adoption assistance payments are well documented and therefore easily verified. In situations where residents do not provide the HA with the necessary documentation needed for verification, it is the responsibility of the HA to take appropriate action until such information is provided.

3. Full-Time Student Earned Income

Comment. The April 5, 1995 interim rule established an exclusion for income earned by full-time students similar to the exclusion for adoption assistance payments. Specifically, the interim rule excluded earnings in excess of $480 for each full-time student 18 years of age or older, excluding the head of household and spouse. The same commenter who

believed adoption assistance should be completely excluded from income wrote to advocate the total exclusion of full-time student earned income. This commenter made the recommendation for the same reasons that it urged exclusion of adoption assistance.

Another commenter believed that the full-time student earned income exclusion should be limited by establishing an age eligibility requirement. The commenter feared that an open-ended exclusion easily lent itself to abuse by persons seeking additional income. The commenter pointed out that many health insurance policies contain such a requirement by limiting coverage to students 25 years of age or younger.

Another commenter believed that in order to ''eliminate needless consternation and controversy'' the April 5, 1995 interim rule should be amended to define ''full time student.''

HUD Response. In response to the commenter who recommended total exclusion of full-time student earned income, HUD reiterates its response above to the suggestion that adoption assistance payments be completely excluded. Like adopted children, full-time students, who are not the family head or spouse, already receive a $480 dependent deduction for rent determination purposes. HUD has also not adopted the other two comments. HUD will not unnecessarily limit the benefit of this exclusion by imposing an age restriction. Further, the definition of ''full-time student'' can be found in new 24 CFR 5.603.

4. Adult Foster Care Payments

Comment. One commenter urged that the exclusion of adult foster care payments should be limited to a small number of adults per household. According to the commenter, this would prevent the warehousing of large numbers of adults in rooming houses with minimal service to foster care cases and maximum profits to providers.

HUD Response. HUD has not adopted the comment. The issue raised by the commenter is more of an occupancy and space standards issue than one concerning the definition of annual income. Any limitation on the number of foster adults is at the discretion of the HA. The HA has certain controls over who is, and is not, permitted to live in a unit.

5. State or Local Job Training Program Compensation

Comment. One of the commenters was concerned about the reduction in revenue resulting from the exclusion of compensation from State or local job training programs. The commenter noted that a tenant's entitlement subsidies could be discontinued due to the income received from the on-the-job training or apprenticeship program. In such cases, these tenant rents could drop to $0. The commenter recommended that the April 5, 1995 interim rule be amended to state that rents will be frozen at the amount charged at the time of entry into the training program.

Another commenter wrote that the exclusion should be modified in order to prevent abuse by tenants seeking to unscrupulously accumulate income. Specifically, the commenter suggested that the exclusion be amended to contain either a limitation on the number of training programs in which a family is permitted to participate and still qualify for an exclusion, or a time limitation beyond which the exclusion would no longer apply.

HUD Response. HUD has adopted the suggestion made by the first commenter. The exclusion on compensation from State and local job training programs has been amended to exclude only incremental increases in income resulting from the training program. In most cases this will have the effect of freezing the rent at the amount charged at the start of the job training program. In addition to addressing the concerns raised by the commenter, this revision will assure that this income exclusion is not more generous than that established by section 515(b) of the NAHA. The provisions of this final rule which implement section 515(b) limit the exclusion to incremental increases in earnings and benefits.

HUD has also made several clarifying changes to the exclusion on income received as a result of a State or local job training program. First, this final rule clarifies that the exclusion applies to all State and local job training programs, including training programs that are not affiliated with a local government. Further, this rule clarifies that the exclusion only covers income received during the period of the job training program.

HUD has not adopted the recommendations made by the second commenter. HUD believes that the limitations suggested by this commenter would be over-regulation that would defeat the exclusion's intent of assisting families in transition from welfare to work.

HUD wishes to note that the job-training program exclusion applies only to its public housing and section 8 programs. This exclusion has successfully been in effect since September 23, 1994. The April 5, 1995 interim rule only made technical corrections to this exclusion.

6. Employment Training Under Section 515(b) of the NAHA

Comment. One commenter questioned the logic of the exclusion set forth by the interim rule at 24 CFR 913.106(c)(13) (now 24 CFR 5.609(c)(13)) and paragraph (2)(xiii) of the definition of ''Annual Income'' in § 950.102. This exclusion implements section 515(b) of the National Affordable Housing Act of 1990 (NAHA). Section 515(b) excludes from annual income the earnings and benefits resulting from programs providing employment training in accordance with the Family Support Act of 1988, section 22 of the 1937 Act, or any comparable Federal, State, or local law. Section 515(b) excludes training income for the period of the program, plus a running 18 month period starting at the point the family member begins his or her first job after completing the program. The commenter wrote that by extending the exclusion period beyond the twelve months customarily utilized for rent determination, the interim rule overly complicated the administration of the exclusion.

HUD Response. HUD has not adopted the recommendations made by this commenter. As described above, the 18 month exclusion period is prescribed by statute and HUD has no authority to adjust the length of the exclusion. HUD wishes to clarify several matters relating to this exclusion. First, the exclusion is separate from the State and local job training program exclusion described previously in this preamble. Secondly, the provisions of this final rule which implement section 515(b) of the NAHA apply only to HUD's public housing and Indian housing programs. Further, the exclusion applies only to those job training programs which meet the criteria set forth in those implementing regulatory provisions. Finally, the exclusion only covers incremental increases in income resulting from participation in the job training program.

7. Property Tax Rebates

Comment. One of the commenters wrote that the property tax rebate exclusion was in need of clarification. The commenter noted that the preamble to the April 5, 1995 interim rule referred to an exclusion of rent ''credits.'' (60 FR 17388, 17389). However, the commenter also pointed out that the regulatory language made no mention of rent credits, but referred to amounts received by the family in the form of ''refunds or rebates.'' Since rent credits are not the

same as property tax rebates, the commenter believed greater definition was needed in order for the exclusion to be applied correctly.

Two commenters believed the tax rebate exclusion was overly broad, and permitted tenants to benefit from improperly received rebates. The commenters wrote that in certain States, public housing residents are not eligible for tax rebates, because the HAs do not pay taxes. Therefore, the commenters recommended that the April 5, 1995 interim rule be amended to include improperly received rebates in income.

HUD Response. HUD wishes to clarify that the property tax rebate exclusion applies to tax refunds or rebates. The exclusion does not apply to rent credits. As the commenter noted, the regulatory text of the April 5, 1995 interim rule utilized the term ''refunds or rebates.'' This final rule adopts the term without change.

HUD decided to implement the tax rebate exclusion in order to support State initiatives designed to benefit low income families. If, based on State regulations, individuals are not eligible for such a benefit, or are receiving the benefit in error, it is the responsibility of the State agency administering the program to make the necessary adjustments.

8. Homecare Payments for the Disabled

Comment. One of the commenters believed the income exclusion for home care payments was lacking in clarity. The commenter suggested that the April 5, 1995 interim rule be amended to define the terms ''developmentally disabled children'' and ''adult family members.''

HUD Response. There is no need for HUD to define these terms, as they are defined by the State program providing the payments. If the family is receiving such a payment from the State because a family member meets the criteria of the definition, the HA should consider the family eligible for the exclusion.

9. Deferred Periodic Amounts of Supplemental Security Income and Social Security Benefits

Comment. One of the commenters questioned why the April 5, 1995 interim rule did not also exclude deferred periodic amounts received in a lump sum from sources other than Supplemental Security Income and Social Security Benefits. The commenter believed this unnecessarily complicated implementation of the rule.

HUD Response. This exclusion implements section 103(a)(1) of the 1992 HCD Act, which amended section 3(b)(4) of the 1937 Act to exclude from annual income ''any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act.'' The amounts referred to are deferred periodic amounts from supplemental security income and social security benefits. Deferred periodic amounts received in a lump sum or in prospective monthly amounts from Supplemental Security Income and Social Security Benefits are excluded, because that is what the law provides. Deferred periodic amounts received in a lump sum or prospective monthly amounts from other sources are counted as income because they are not covered by a statutory exclusion.

VI. The Balanced Budget Downpayment Act, I

The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996), also known as the Continuing Resolution (CR), contained three provisions which impact this final rule. Section 402(a) of the CR provided that HAs must establish minimum rents, ''[n]otwithstanding sections 3(a) and (8)(o)(2)'' of the 1937 Act.[1] The second provision, section 402(b) of the CR, amended section 3(a)(2) of the 1937 Act to permit HAs to adopt ceiling rents. Section 402(c) of the CR amended section 3(b)(5) of the 1937 Act to permit HAs, at their expense, to establish additional deductions from annual income in deriving adjusted income.

Section 402(f) of the CR makes all three of the provisions described above effective only for Fiscal Year (FY) 1996. With respect to the first two provisions, HUD has decided not to amend its regulations to incorporate these statutory changes. HUD has implemented these changes made by the CR through other, non-regulatory means.

On August 30, 1996 (61 FR 46344), HUD published for public comment an interim rule implementing section 402(c) of the CR. The August 30, 1996 interim rule amended 24 CFR parts 913 and 950 to permit HAs to establish exclusions to earned income as a means of attracting more tenants with earned income. Although section 402(c) of the CR expired at the end of FY 1996 (September 30, 1996), a change made by the Secretary in the definition of income permitting an exclusion for earned income can have longer lasting effect. The Secretary exercised this authority in publishing the August 30, 1996 interim rule. New subpart F to 24 CFR part 5 incorporates the interim amendment to part 913 at § 5.609(d).

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an optional earned income exclusion, HUD welcomes public comment on the amendments made by the interim rule. The public comment deadline is October 29, 1996. The August 30, 1996 interim rule contains a detailed discussion of the interim amendments and provides the address where comments should be submitted.

VII. Updating the Authority Citations for 24 CFR Part 5

HUD established 24 CFR part 5 to set forth cross-cutting definitions and program requirements. Since publication of the February 9, 1996 final rule establishing subpart A of 24 CFR part 5, HUD has issued additional rulemakings establishing new subparts to part 5. This final rule, for example, creates a new subpart F. The establishment of these additional subparts has caused the original authority citation set forth in 24 CFR part 5 to become outdated. This final rule updates and corrects the authority citations in 24 CFR part 5.

VIII. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review. This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review.* Any changes made to the final rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington D.C.

This final rule was appropriate for review under E.O. 12866 because it is a significant regulatory action of HUD but not an ''economically significant'' regulatory action under Executive Order 12866. This final rule will not have an annual effect on the economy of $100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost estimate prepared by HUD at the interim rule stage concluded that the cost of the amendments would not exceed $10 million. A copy of the cost

[1] This minimum rent provision was later amended by section 230 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRA) (Pub. L. 104–134, approved April 26, 1996). Section 230 of OCRA provided that the Secretary of HUD may waive the minimum rent requirement established by section 402 of the CR in order ''to provide a transition period for affected families.''

estimate is available for public inspection in the office of the Department's Rules Docket Clerk at the above address.

Unfunded Mandates Reform Act. The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Executive Order 12612, Federalism. The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this final rule will not have federalism implications and, thus, are not subject to review under that Order. Specifically, the final rule adds additional exclusions to the definition of income in the assisted housing programs. As such, the final rule will not impinge upon the relationship between the Federal Government and State and local governments, and the final rule is not subject to review under the order.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule has potential for significant impact on family formation, maintenance, and general well-being. Families will benefit from this final rule by being allowed additional exclusions from annual income. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule adds nine exclusions to HUD's definition of annual income. With regard to the lump sum exclusion, the number of lump sum exclusions in any one project will be minor, and will not significantly impact any HA. With regard to the remaining income exclusions, since HUD will supplement any lost rental income from the added exclusions, the exclusions will not have an economic impact on housing authorities.

This rule also consolidates the nearly identical provisions of 24 CFR part 813 and 913 in a new subpart F to 24 CFR part 5. The consolidation of these regulatory requirements merely eliminates unnecessary repetition from title 24. New subpart F to 24 CFR part 5 does not affect or establish any substantive policy. Accordingly, it will not have an economic impact on small entities.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance program number(s) are 14.146, 14.147, 14.850 and 15.141.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 950

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, subtitle A and chapters II, VIII, and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart B—[Amended]

2. A new authority citation to subpart B is added to read as follows:

Authority: 42 U.S.C. 3535(d), 3543, 3544, and 11901 *et seq.*

Subpart C—[Amended]

3. A new authority citation to subpart C is added to read as follows:

Authority: 42 U.S.C. 1701r–1 and 3535(d).

Subpart E—[Amended]

4. A new authority citation to subpart E is added to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

5. A new subpart F is added to read as follows:

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

Sec.

5.601 Purpose and applicability.
5.603 Definitions.
5.605 Overall income eligibility for admission.

5.607 Income limits for admission.
5.609 Annual income.
5.611 Adjusted income.
5.613 Total tenant payment.
5.615 Utility reimbursements.
5.617 Reexamination and verification.

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

§ 5.601 Purpose and applicability.

(a) This subpart establishes definitions and requirements concerning income limits for admission, annual income, adjusted income, total tenant payment, utility allowances and reimbursements, and reexamination of income and family composition for:

(1) HUD's public housing programs, including its public housing homeownership programs.

(2) Housing assisted under section 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437f).

(i) Section 5.613 (Total tenant payment) and the definitions of ''*tenant rent*'' and ''*total tenant payment*'' found in § 5.603 do not apply to the Section 8 Rental Voucher Program.

(ii) Section 5.615 (Utility reimbursement) and the definition of ''utility reimbursement'' found in § 5.603 also do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

(iii) Section 5.607 (Income limits for admission) does not apply to the Section 8 Rental Voucher and Rental Certificate Programs.

(3) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)).

(b) This subpart does not apply to HUD's Indian housing programs. The analogous rule that applies to Indian housing is located at 24 CFR part 950.

§ 5.603 Definitions.

As used in this subpart:

(a) The terms *elderly person, low-income family, person with disabilities, State,* and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

(b) The terms *1937 Act* and *public housing agency (PHA)* are defined in § 5.100.

(c) The terms *disabled family, elderly family, family,* and *live-in aide* are defined in § 5.403.

(d) The following terms shall have the meanings set forth below:

Adjusted income. See § 5.611.

Annual income. See § 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under § 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term ''owner'' shall also include a ''borrower'' as defined in 24 CFR part 885.

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total tenant payment. See § 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

§ 5.607 Income limits for admission.

(a) *General.* (1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(1) *For Section 8 Programs:* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

(iii) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low-income families;

(iv) Commitment of an owner to attaining occupancy by families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the owner is pursuing this goal throughout its assisted projects in the community; and

(v) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103).

(2) *For public housing only.* (i) Need for admission of a broader range of tenants to obtain full occupancy;

(ii) Local commitment to attaining occupancy by families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(iii) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(iv) Need to avoid displacing low-income families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners and PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(d) *Reporting.* PHAs and owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain the reasonably current data necessary to monitor compliance with the income eligibility restrictions described in paragraph (a) of this section.

(e) *Inapplicability to certain scattered site housing.* The income eligibility restrictions described in paragraph (a) of this section do not apply to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)).

(f) *Inapplicability to the Section 8 Rental Voucher and Rental Certificate Programs.* The provisions of this section do not apply to the Section 8 Rental Voucher and Section 8 Rental Certificate Programs.

(Approved by the Office of Management and Budget under Control number 2502–0204.)

§ 5.609 Annual income.

(a) Annual income means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets

in excess of $5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) *Welfare assistance*. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) *For public housing only:* (i) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the 1937 Act (42 U.S.C. 1437t), or any comparable Federal, State, or local law during the exclusion period.

(ii) For purposes of this paragraph, the following definitions apply:

(A) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(*1*) Is authorized by a Federal, State or local law;

(*2*) Is funded by the Federal, State or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this section, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the family member is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be

published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *For public housing only.* In addition to the exclusions from annual income covered in paragraph (c) of this section, a PHA may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a PHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the PHA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in § 5.611.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

§ 5.611 Adjusted income.

Adjusted income means annual income less the following deductions:

(a) $480 for each dependent;

(b) $400 for any elderly family or disabled family;

(c) For any family that is not an elderly family or disabled family but has a member (other than the head of household or spouse) who is a person with a disability, disability assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the person with disabilities;

(d) For any elderly family or disabled family:

(1) That has no disability assistance expenses, an allowance for medical expenses equal to the amount by which the medical expenses exceed three percent of annual income;

(2) That has disability assistance expenses greater than or equal to three percent of annual income, an allowance for disability assistance expenses computed in accordance with paragraph (c) of this section, plus an allowance for medical expenses that is equal to the family's medical expenses;

(3) That has disability assistance expenses that are less than three percent of annual income, an allowance for combined disability assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent of annual income; and

(e) Child care expenses.

§ 5.613 Total tenant payment.

(a) *Total tenant payment for families whose initial lease is effective on or after August 1, 1982.* (1) Total tenant payment is the amount calculated under section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)). If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (C) of section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)(C)) shall be the amount resulting from one application of the percentage.

(2) *For public housing only.* Total tenant payment for families residing in public housing does not include charges for excess utility consumption or other miscellaneous charges (see § 966.4 of this chapter).

(b) *Total tenant payment for families residing in public housing whose initial lease was effective before August 1, 1982.* Paragraphs (b) and (c) of 24 CFR 913.107, as it existed immediately before November 18, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 900 to 1699), will continue to govern the total tenant payment of families, under a public housing program, whose initial lease was effective before August 1, 1982.

(c) *Inapplicability to the Section 8 Rental Voucher Program.* The provisions of this section do not apply to the Section 8 Rental Voucher Program.

§ 5.615 Utility reimbursements.

(a) *General.* Where applicable, the utility reimbursement shall be paid to the family in the manner provided in the pertinent program regulations. If the family and the utility company consent, a PHA or owner may pay the utility reimbursement jointly to the family and the utility company, or directly to the utility company.

(b) *Inapplicability to the Section 8 Rental Voucher Program.* The provisions of this section do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

§ 5.617 Reexamination and verification.

(a) *Responsibility for initial determination and reexamination.* The PHA or owner, as applicable, must conduct a reexamination of family income and composition at least annually. The ''effective date'' of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of the lease; and

(2) In the case of a reexamination of an existing participant, the effective date of the redetermined housing assistance payment with respect to the Rental Voucher program and the effective date of the redetermined total tenant payment in all other cases.

(b) *Verification.* (1) As a condition of admission to, or continued occupancy of, any assisted unit, the PHA or owner, as applicable, shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form (including any release and consent as required under

24 CFR part 760) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or owner, as applicable, and to HUD such information as the HA or owner, as applicable, and HUD determines to be necessary.

(2) The PHA or owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be considered necessary if it is required for purposes of determining or auditing a family's eligibility to receive housing assistance, for determining the family's annual income, adjusted income or total tenant payment.

(3) The use of disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this part or applying for assistance.

(Approved by the Office of Management and Budget under control numbers 2502–0204 and 2577–0083.)

PART 200—INTRODUCTION TO FHA PROGRAMS

6. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

Subpart W—Administrative Matters

7. A new § 200.1303 is added to read as follows:

§ 200.1303 Annual income exclusions for the rent supplement program.

The exclusions to annual income described in 24 CFR 5.609(c) apply to those rent supplement contracts governed by the regulations at 24 CFR part 215 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219), in lieu of the annual income exclusions described in 24 CFR 215.21(c) (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

8. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

9. A new § 236.3 is added to subpart A to read as follows:

§ 236.3 Annual income exclusions.

The exclusions to annual income described in 24 CFR 5.609(c) apply to those program participants governed by the regulations at subpart A of 24 CFR part 236 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499), in lieu of the annual income exclusions described in 236.3(c) (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499).

PART 813—[REMOVED]

10. Part 813 is removed.

PART 913—[REMOVED]

11. Part 913 is removed.

PART 950—INDIAN HOUSING PROGRAMS

12. The authority citation for 24 CFR part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee; and 3535(d).

13. Section 950.102 is amended by:

a. Revising paragraphs (5) and (6) to the definition of ''*Adjusted income*'';

b. Revising paragraphs (1)(iv), (1)(v), and (2) of the definition of ''*Annual Income*'';

c. Revising the definition of ''*Child care expenses*''; and

d. Revising the definition of ''*Dependent*'' to read as follows:

§ 950.102 Definitions.

* * * * *

Adjusted income. * * *

* * * * *

(5) Child care expenses, as defined in this definition; and

(6) Excessive travel expenses, not to exceed $25 per family per week, for employment- or education-related travel.

* * * * *

Annual Income. * * *

(1) * * *

(iv) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (2)(xiv) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (2)(iii) of this definition);

* * * * *

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (1)(v) of this definition);

(iv) Amounts received by the family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a live-in aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(C) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(D) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(E) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs

with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(ix) Temporary, nonrecurring or sporadic income (including gifts);

(x) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(xi) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xii) Adoption assistance payments in excess of $480 per adopted child;

(xiii) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the Act (42 U.S.C. 1437t), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xiii) of this definition, the following definitions apply.

(A) *Comparable Federal, State, Tribal or local law* means a program providing employment training and supportive services that:

(*1*) Is authorized by a Federal, State, Tribal or local law;

(*2*) Is funded by the Federal, State, Tribal or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this definition, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the Act. If the family member is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(xiv) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(xv) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes on the dwelling unit;

(xvi) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvii) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the Act. A notice will be published in the Federal Register and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of countable income received from such employment.

* * * * *

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age or is a disabled person or handicapped person, or is a full-time student.

* * * * *

§ 950.103 [Removed]

14. Section 950.103 is removed.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

15. The authority citation for 24 CFR part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

16. Section 960.208 is revised to read as follows:

§ 960.208 Rent.

The amount of rent payable by the tenant to the PHA shall be the Tenant Rent, as defined in 24 CFR part 5, subpart F.

Dated: September 6, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–26496 Filed 10–17–96; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Friday
October 18, 1996

Part III

Securities and Exchange Commission

17 CFR Part 210, et al.

Periodic Reporting of Unregistered Equity Sales; and Streamlining Disclosure Requirements Relating to Significant Business Acquisitions; Final Rules and Offshore Press Conferences, Meetings With Company Representatives Conducted Offshore and Press Related Materials Released Offshore; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release No. 34–37801; International Series No. 1020; File No. S7–19–95]

RIN 3235–AG47

Periodic Reporting of Unregistered Equity Sales

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to forms under the Securities Exchange Act of 1934 and Regulations S–K and S–B to require registrants to report recent sales of equity securities that have not been registered under the Securities Act of 1933. The revisions are designed, in part, to address abusive practices in connection with the sale of equity securities by domestic companies in purported Regulation S offerings by requiring more disclosure about such sales in a timely fashion.

EFFECTIVE DATE: The revisions are effective November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Walter Van Dorn, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549, (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following forms under the Securities Exchange Act of 1934 [1] to require periodic disclosure of unregistered equity offerings: Form 10–Q, [2] Form 10–QSB, [3] Form 10–K, [4] Form 10–KSB [5] and Form 8–K. [6] In addition the Commission is amending the following Rules: Item 701 [7] of Regulation S–K [8] and Item 701 [9] of Regulation S–B [10].

I. Discussion

A. Introduction and Summary

Today the Commission is adopting amendments to its rules and forms applicable to U.S. reporting companies [11] to require timely disclosure of unregistered sales of equity securities. The amendments were proposed in June 1995. [12] They are designed to address concerns that the current rules do not require adequate and timely disclosure to shareholders and the markets of unregistered offerings of equity securities, particularly those made in reliance upon Regulation S [13], the safe harbor for offshore sales, and Section 4(2) [14], the private placement exemption. As a result, shareholders and the markets have been unaware of the potential dilution or the effects on the financial condition of the issuer that these unregistered sales can cause. Moreover, the lack of a specific disclosure requirement may be permitting the abusive practices [15] of some U.S. issuers selling common equity offshore purportedly in reliance upon Regulation S to occur without notice to the market of such offerings. For example, without a timely disclosure requirement, issuers have been able to sell shares offshore at a substantial discount to the U.S. market price, and the shares have been resold in the U.S. markets before the U.S. markets have been made aware of potential significant dilution or effects on the financial condition of the issuer of such transactions.

The amendments are being adopted substantially as proposed, with one important change. In the proposal, the rules generally would have required quarterly reporting of exempt equity sales (e.g., Regulation S and private placements). As adopted, quarterly reporting will be required for exempt equity sales other than those made in reliance on Regulation S. The Commission believes that quarterly reporting of most exempt equity sales will provide adequate and timely disclosure. Most exempt sales by reporting companies involve private placements. In those cases, the securities cannot be freely resold into the public markets until a significant period of time after sale. Consequently, quarterly reporting should provide sufficient notice. [16]

For Regulation S sales, however, current reporting on Form 8–K will be required within 15 days of their occurrence. The Commission believes that quarterly reporting would not be timely enough for Regulation S sales because, under the current 40-day Regulation S restricted period for sales of equity securities by domestic reporting companies, the restricted period could expire, and securities could be resold in the U.S. market (assuming an exemption is available), before disclosure is made. Several commenters supported a Form 8–K filing requirement. [17]

The Commission is currently considering whether to revise the issuer safe harbor for sales of equity securities by domestic reporting companies under Regulation S, including possibly lengthening the restricted period. [18] If the restricted period for sales of equity securities pursuant to Regulation S is changed, the Commission intends to consider revising the periodic disclosure requirement for Regulation S sales adopted in this release.

B. Description of Amendments

1. Disclosure Required

Under the new requirements, the following information about unregistered sales of equity securities [19] will be required to be disclosed for the applicable reporting period:

* the title and amount of securities sold, and the date of the transaction
* the name of the underwriter or placement agent
* the consideration received
* persons or classes of persons to whom the securities were sold
* the exemption from registration claimed
* in the case of convertible or exchangeable securities, warrants and options, the terms of conversion or exercise.

With the exception of the last disclosure item, this information is

[1] 15 U.S.C. 78a *et seq.* (the ''Exchange Act'').

[2] 17 CFR 249.308a.

[3] 17 CFR 249.308b.

[4] 17 CFR 249.310.

[5] 17 CFR 249.310b.

[6] 17 CFR 249.308.

[7] 17 CFR 229.701.

[8] 17 CFR Part 229.

[9] 17 CFR 228.701.

[10] 17 CFR Part 228.

[11] The new disclosure requirements apply to U.S. reporting companies and foreign companies not using the foreign integrated disclosure system.

[12] Securities Act Release No. 7189 (June 27, 1995) [60 FR 35656] (the ''Proposing Release'').

[13] 17 CFR 230.901–904.

[14] 15 U.S.C. 77d(2).

[15] For a description of such practices, *see* Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663] (the ''Regulation S Interpretive Release'').

[16] Under Rule 144, the safe harbor for resales of ''restricted'' securities (including privately placed securities), resales into the public markets cannot be made until at least two years after the sale by the issuer or an affiliate. Although the Commission proposed to reduce these time periods (see Securities Act Release No. 7187), even under a shortened time period quarterly reporting would still result in disclosure before the securities could be resold without registration into the public markets.

[17] Twenty-four letters of comment were received in response to the Proposing Release, 16 of which responded specifically to questions relating to quarterly reporting of sales of unregistered sales of equity securities. Five commenters stated that unregistered offerings of equity securities should be reported on Form 8–K. These comment letters, together with a Summary of Comments prepared by Commission staff, are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington D.C. 20549. Persons seeking these materials should make reference to File No. S7–19–95.

[18] *See* Securities Act Release No. 7190 (June 27, 1995).

[19] ''Equity security'' is defined in Rule 3a11–1 [17 CFR 240.3a11–1]. It includes convertible and exchangeable securities, warrants, options and other types of equity-related securities.

currently required to be disclosed in certain Securities Act filings pursuant to Item 701 of Regulation S–K and Regulation S–B. In response to the Commission's request for comment in the Proposing Release, one commenter suggested that such information in addition to that currently listed in Item 701 would be helpful to investors. The additional information required is disclosure of pricing information for the underlying common equity when convertible securities, warrants and similar securities are sold. In those situations, information about the conversion or exercise price is important to shareholders and the market place since it shows the potential dilutive effects of conversion or exercise. Item 701 of Regulation S–K and Regulation S–B will be amended to require that this additional information be provided in filings of annual, periodic or current reports under the Exchange Act.

Several commenters opposed the requirement that the names of persons to whom the securities were sold be disclosed. Item 701 would continue to provide companies with an option to describe the person or persons to whom the securities were sold by class (for example, to an accredited investor), as opposed to the names of individual investors.

2. Timing of Disclosure

Information about unregistered sales of equity securities (except those made under Regulation S) will be required to be provided in an issuer's Quarterly Report on Form 10–Q or 10–QSB for sales during the issuer's first three fiscal quarters, and in the Annual Report on Form 10–K or 10–KSB for sales made during the final fiscal quarter. Information about sales made in reliance upon Regulation S will be required to be reported pursuant to new Item 9 of Form 8–K and filed within 15 days of the sale. The Form 8–K filing will be required if the issuer claims reliance on Regulation S under Item 701 of Regulation S–K, even if reliance on other possible bases for the unregistered sale also could be claimed.

C. Effective Date of Amendments

The amendments will be effective November 18, 1996. Sales that occur prior to the effective date, but for which a report is not due until after the effective date, must be reported on the appropriate form. For example, an exempt private placement occurring before the effective date must be reported on the Form 10–Q covering the quarter if that form has not been filed before the effective date. A sale of equity securities pursuant to Regulation S occurring before the effective date must be reported on Form 8–K if the Regulation S sale was made within 15 days before the effective date.

II. Cost-Benefit Analysis

The new requirement to disclose sales of unregistered equity securities is expected to increase modestly registrants' costs and compliance burdens. That requirement should not significantly increase the burden on company resources, since most registrants are required to gather such information in connection with the preparation of audited and unaudited financial statements. To the extent the requirement results in any additional expense, it is justified in view of the material information that will be made available to investors in a timely manner.

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,[20] regarding the amendments. The new rules with respect to disclosure of recent sales of unregistered securities are intended to provide investors with more timely and complete information regarding changes in outstanding securities of public companies.

Small U.S. entities that file current or quarterly reports will be affected by the proposed amendments to the extent that they offer equity securities in unregistered offerings. To the extent small U.S. entities are affected by the proposed amendments, the investors in such small entities are expected to benefit from the increased information required to be provided.

The analysis also indicates that the amendments to the rules and forms modestly increase reporting, recordkeeping and compliance requirements. These requirements should not significantly increase the burden on company resources, since such information will be readily available, as the transaction in question would have been completed within the prior fiscal quarter, or, in the case of Form 8–K reporting, within the prior 15 days.

The term ''small business,'' as used with reference to an issuer for purposes of the Regulatory Flexibility Act, is defined by Rule 157[21] under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and who is engaged or proposing to engage in small business financing. The Commission is aware of approximately 1,100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under Rule 157. Because these rules will affect issuers that sell securities in unregistered offerings, and in the majority of situations no reporting with the Commission of unregistered security offerings currently is required, little information is available to the Commission that would make it possible to estimate the number of small issuers that will be affected by these amendments. However, approximately 11,400 issuers are subject to Exchange Act reporting requirements, and, based on discussions with intermediaries and other participants in the Regulation S market, the Commission staff estimates that approximately 500 of such issuers may conduct Regulation S offerings of equity securities per year. The Commission staff further estimates that approximately 250 such issuers are ''small businesses'' under Rule 157.

As stated in the analysis, the economic impact of the new rules is expected to be small, particularly in view of the additional information and protection to be provided to investors. In part, to minimize the recordkeeping and reporting burden, and corresponding economic impact, on small entities and others, the Commission has decided to require that unregistered sales of securities (other than sales in reliance on Regulation S) be reported on a quarterly basis. Only sales of securities which were not registered in reliance on Regulation S are proposed to be reported within 15 days.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Walter Van Dorn, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, (202) 942–2990.

IV. Paperwork Reduction Act

In June, 1995, the staff submitted to the Office of Management and Budget (''OMB'') for review proposals to amend the following information collections under the Exchange Act to require periodic disclosure of unregistered equity offerings: Form 10–Q, Form 10–QSB, Form 10–K and Form 10–KSB.[22]

[20] 5 U.S.C. 603 (1988).

[21] 17 CFR 230.157.

[22] There are no changes regarding the purpose, use or necessity of the information collections for which OMB approval was requested, nor are there changes to the estimates of reporting or recordkeeping burden expected to result from adoption of the proposed amendments. See the Proposing Release for estimates of changes in reporting or recordkeeping burden.

These information collections display an OMB control number and expiration date.[23] The information collections are required to be filed by registrants subject to the Exchange Act reporting requirements and are publicly available. The Commission solicited comment on the compliance burdens associated with the proposals but received no public comment on the burden estimates.

In response to public comments received on the Proposing Release, as discussed in Section I.A of this release, in addition to adopting changes to the information collections listed in the preceding paragraph, the Commission also is adopting changes to Form 8–K to require current reporting on Form 8–K of Regulation S sales within 15 days after their occurrence. Form 8–K contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[24] The Commission is submitting the revision to Form 8–K to OMB for review.

The title of the affected information collection is ''Form 8–K.'' The likely respondents to Form 8–K generally are all issuers reporting under the Exchange Act that are not foreign private issuers. Currently, an estimated 11,400 respondents file 21,000 Forms 8–K per year for a total annual burden of 105,000 hours. The Commission believes that the same number of respondents will file Form 8–K after the revision described in this release becomes effective, but those making Regulation S sales will file Form 8–K more frequently, resulting in an increased number of total burden hours. Since there currently is not any Exchange Act reporting requirement when Regulation S sales are made, the Commission has no basis for estimating the increase in the Form 8–K total burden hours expected to result from this rulemaking.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 with reference to File No. S7–19–95. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full affect if OMB receives it within 30 days of publication.

V. Statutory Bases

The amendments to the Commission's rules and forms are being adopted pursuant to sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act.

List of Subjects in 17 CFR Parts 228, 229 and 249

Reporting and recordkeeping requirements, and Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted,

2. By amending § 228.701 by adding paragraph (e) to read as follows:

§ 228.701 (Item 701) Recent sales of unregistered securities.

* * * * *

(e) If the information called for by this paragraph (e) is being presented on Form 8–K, Form 10–QSB, Form 10–Q, Form 10–KSB or Form 10–K (§§ 249.308, 249.308b, 249.308a, 249.310b or 249.310) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted,

* * * * *

4. By amending § 229.701 by adding paragraph (e) before the Instructions to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities.

* * * * *

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8–K, Form 10–QSB, Form 10–Q, Form 10–KSB or Form 10–K (§§ 249.308, 249.308b, 249.308a, 249.310b or 249.310) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

6. By amending Form 8–K (referenced in § 249.308) by adding a sentence to the end of General Instruction B.1 and by adding Item 9 to read as follows:

Note: Form 8–K does not and these amendments will not appear in the Code of Federal Regulations

Form 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to Item 9 is required to be filed within 15 calendar days after the date of sale.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 9. Sales of Equity Securities Pursuant to Regulation S.

Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant that were not registered under the Securities Act in reliance upon Regulation S under the Securities Act.

* * * * *

[23] Unless a currently valid OMB number is displayed, an agency may not sponsor or conduct or require response to an information collection pursuant to 44 U.S.C. § 3506(c)(1)(B).

[24] 44 U.S.C. 3501 *et seq.*

7. By amending Form 10–Q (referenced in § 249.308a) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

Note: Form 10–Q does not and these amendments will not appear in the Code of Federal Regulations

Form 10–Q

* * * * *

Part II

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act other than unregistered sales made in reliance on Regulation S.

* * * * *

8. By amending Form 10–QSB (referenced in § 249.308b) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

Note: Form 10–QSB does not and these amendments will not appear in the Code of Federal Regulations

Form 10–QSB

* * * * *

Part II

* * * * *

Item 2. Changes in Securities.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act other than unregistered sales made in reliance on Regulation S.

* * * * *

9. By amending Form 10–K (referenced in § 249.310) by revising Item 5 of Part II to read as follows:

Note: Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

Form 10–K

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter) and Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act other than unregistered sales made in reliance on Regulation S. *Provided* that if the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB (§ 249.308a or 249.308b of this chapter) it need not be furnished.

* * * * *

10. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 5 of Part II to read as follows:

Note: Form 10–K does not and these amendments will not appear in the Code of Federal Regulations

Form 10–KSB

* * * * *

Part II

* * * * *

Item 5. Market for Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S–B and Item 701 of Regulation S–B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act other than unregistered sales made in reliance on Regulation S. *Provided* that if the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB it need not be furnished.

* * * * *

Dated: October 10, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26560 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 239 and 249

[Release Nos. 33–7355; 34–37802; FR–47; International Series No. 1021; File No. S7–19–95]

RIN 3235–AG47

Streamlining Disclosure Requirements Relating to Significant Business Acquisitions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to its rules that will streamline requirements with respect to financial statements of significant business acquisitions in filings made under the Securities Act of 1933 and the Securities Exchange Act of 1934.

EFFECTIVE DATE: The rule revisions are effective November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Douglas Tanner, (202) 942–2960, Associate Chief Accountant, Office of Chief Accountant, or Walter Van Dorn, (202) 942–2990, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following rules and forms under the Securities Act of 1933 (the ''Securities Act'')[1] and the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] concerning financial statements of acquired (or to be acquired) businesses: Rule 3–05 of Regulation S–X,[3] Item 310 of Regulation S–B,[4] Item 17 of Form S–4,[5] Item 17 of Form F–4,[6] and General Instructions and Item 7 of Form 8–K.[7]

I. Introduction

On June 27, 1995, the Commission published for comment proposed revisions to rules and forms that would streamline reporting requirements concerning financial statements of acquired and to be acquired businesses and require quarterly reporting of unregistered equity offerings.[8] The proposals were intended to reduce impediments to registered offerings and address certain problematic practices involving unregistered sales of equity securities of domestic reporting companies purportedly in reliance on Regulation S.[9] A significant number of sales under Regulation S have been attributed to the inability of issuers to meet the registration disclosure requirement of providing audited financial statements of significant businesses acquired or likely to be acquired.[10] The Commission is today adopting amendments to those requirements. In a companion release

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 210.3–05.

[4] 17 CFR 228.310.

[5] 17 CFR 239.25.

[6] 17 CFR 239.34.

[7] 17 CFR 249.308.

[8] Securities Act Release No. 7189 (June 27, 1995) [60 FR 35656] (the ''Proposing Release'').

[9] 17 CFR 230.901–904. Regulation S was adopted by the Commission in 1990 to clarify the extraterritorial application of the registration requirements of the Securities Act. *See* Release No. 33–6863 (Apr. 24, 1990) [55 FR 18306].

[10] *See* ''Recent Problems Arising Under Regulation S,'' *Insights*, Volume 98, Number 8, August 1994.

issued today, the Commission is also adopting certain amendments regarding requirements for reporting unregistered sales of equity securities, including sales made under Regulation S.[11]

The amendments adopted today will allow companies in most circumstances to provide information about significant acquisitions in Securities Act registration statements on the same basis as for Exchange Act reporting. The amendments eliminate in most cases the impediment of obtaining audited financial statements for a business acquisition more promptly than otherwise would be required. That requirement may have caused companies to forgo public offerings and to undertake private or offshore offerings. As discussed more completely in Section II, the amended rules provide that financial statements of a business acquired within the preceding 74 days or expected to be acquired in the future need not be furnished in connection with most initial and repeat offerings under the Securities Act if the business falls below a 50% significance level. Those financial statements will continue to be required to be filed in most cases on Form 8–K subsequent to the offering. In addition, as discussed more completely in Section III, the Commission is raising the thresholds of significance that determine whether financial statements of an acquired business must be provided in filings made under either the Securities Act or the Exchange Act, and the number of years for which historical financial statements must be furnished. Audited financial statements of acquired businesses for one, two or three years were required under the former rules for businesses significant at the 10%, 20%, and 40% levels, respectively. The amended rules raise those thresholds to 20%, 40%, and 50%, respectively.

II. Waiver of Financial Statements for Certain Pending and Recently Completed Business Acquisitions in Registration Statements and Proxy Statements

The amendments adopted today will eliminate in most circumstances the requirement to include in Securities Act registration statements audited financial statements for probable business acquisitions or for business acquisitions that were consummated 74 or fewer days before a registered offering of securities.[12] Although the proposed rules would have permitted omission of those financial statements in all circumstances other than offerings by ''blank check companies,'' [13] the rules as adopted provide that financial statements of probable and recently consummated business acquisitions will continue to be required in registration statements of any issuer if the acquisition would be significant above the 50% level using the tests that have been previously established.[14] As was permitted prior to today's amendments, registered offerings that are not primarily of a capital raising nature and certain private placements may go forward without financial statements of an acquired business, regardless of its significance, until 75 days following the acquisition.[15]

The Commission received nineteen comment letters on the Proposing Release, of which seventeen generally supported conforming the disclosure requirements under the Exchange Act and the Securities Act for significant business acquisitions. Although some commenters recommended that offerings be allowed to proceed without limitation as to the size of the business acquisition, most commenters favored limiting the waiver of financial statements to acquisitions below some particular significance level. Among the commenters supporting a limit, the recommended thresholds for disclosure varied greatly, ranging from 10% to 80%.

As adopted, the amendments to Rule 3–05 of Regulation S–X and Item 310 of Regulation S–B require inclusion of the audited financial statements in registration statements only if the pending or recent acquisition exceeds the 50% significance level. The Commission believes it is an appropriate policy to strive to remove obstacles to proceeding with registered offerings despite pending or recent acquisitions, but recognizes that an acquisition could be so large relative to an issuer that investors would need financial statements of the acquired business for a reasoned evaluation of any primary capital raising transaction by the issuer. The selection of the 50% significance level reflects a weighing of conflicting considerations in the light of comments received on the proposal.

The amended rules do not require the financial statements of businesses below the 50% significance level to be included in registration statements until 75 days after consummation of the acquisition, although registrants may choose to do so on a voluntary basis. Under the proposal, the requirement to furnish financial statements in registration statements would have been automatically waived until the 75th day *unless* the financial statements were readily available at an earlier time, which was similar to the requirement for Exchange Act reporting purposes.[16] Eight commenters criticized the term ''readily available'' as vague and unworkable. In that regard, several commenters observed that, although an acquired business's financial statements may have been audited previously, filing of the financial statements may be delayed while consents and representations are obtained, due diligence procedures are performed, pro forma information is prepared, and compliance with all filing requirements is ascertained. While some issuers may choose to complete promptly all steps necessary to file the financial statements well in advance of the 75th day deadline, others may schedule these activities solely to ensure that the financial statements can be filed by the final date due. Because of the discretion exercisable by issuers, the ''readily available'' criterion would not appear to result in more prompt filing of financial statements nor would it be interpreted consistently by issuers. Accordingly, as adopted, the rule omits the ''readily available'' criterion for presenting financial statements during the 75-day period. A conforming change to the requirements of Form 8–K also has been adopted.[17]

As contemplated by the proposal, today's amendments provide that the pro forma financial information required by Regulation S–X to depict the effects of a business acquisition need not be furnished unless the financial statements of the acquiree are furnished. Article 11 of Regulation S–X is amended to conform the significance threshold for providing pro forma financial statements in connection with

[11] Release No. 34–37801 (Oct. 10, 1996).

[12] *See* revisions to Rule 3–05 of Regulation S–X and Item 310(c) of Regulation S–B [17 CFR 210.3–05 and 17 CFR 228.310(c)]. The date of an offering is specified as the date of a final prospectus or prospectus supplement relating to the offering as filed with the Commission pursuant to Rule 424(b) [17 CFR 230.424(b)] under the Securities Act.

[13] A ''blank check company'' is defined in § 230.419 of Regulation C [17 CFR 230.419(a)(2)].

[14] The significance of an acquired business is evaluated based on: (i) the amount of the issuer's investment in the acquired business; (ii) the total assets of the acquired business; and (iii) the pre-tax income of the acquired business, all as compared to the comparable items in the registrant's most recent audited annual financial statements. [*See* 17 CFR 210.1–02(w) and 17 CFR 228.310(c)(2).]

[15] *See* Instruction 2 to Item 7 of Form 8–K.

[16] A Form 8–K reporting a significant acquisition is required to be filed within 15 days of consummation of the acquisition. If financial statements of the acquired business are not available, they are required to be filed by amendment to the Form 8–K as soon thereafter as practicable, but not later than 60 days after the initial report is filed. *See* General Instructions and Items 2 and 7(a)(4) of Form 8–K.

[17] *See* revisions to Item 7 of Form 8–K.

business acquisitions to the minimum 20% significance level in Rule 3–05 and Item 310 of Regulation S–B.[18]

Other than the changes described herein affecting the financial statements and pro forma information required pursuant to Rules 3–05 and Article 11 of Regulation S–X and Item 310 of Regulation S–B, the amendments do not change the information required in filings with respect to significant acquisitions. For example, likely effects of a probable or recently consummated business combination are required to be discussed in Management's Discussion and Analysis, to the extent material.[19] In addition, an issuer's financial statements must include disclosures regarding the terms and effects of material business combinations to the extent required by generally accepted accounting principles.[20]

The Commission recognizes the difficulty in determining the disclosure to be made regarding significant transactions and events that occur in proximity to an issuer's capital raising activities before complete and reliable information becomes available. Issuers may conclude in some cases that an offering must be delayed until significant uncertainties are resolved, or at least until they are identified fully, while in other cases no delay is necessary because adequate disclosure can be furnished. One commenter recommended that a safe harbor be provided for disclosures pertaining to significant acquisitions until audited financial statements are available. Since a business acquisition is not fundamentally different from other significant events affecting issuers and requiring careful consideration of the appropriate disclosure to be made in Management's Discussion and Analysis and the financial statements, the Commission believes it is not appropriate at this time to address separately the need for a safe harbor.

A domestic company may proceed with a registered offering of securities without financial statements of a recent or probable acquiree in the circumstances described above, but it is required by Form 8–K to file financial statements of each significant acquired business within 75 days of consummation of the acquisition.[21] Although the amended rules apply to offerings of domestic and foreign issuers alike, foreign private issuers are not subject to quarterly or Form 8–K reporting rules. Several commenters believed that foreign issuers should be required to file the financial statements within some specified time after completion of a business acquisition as a condition for omission of the acquiree's financial statements in a registration statement under the new rules. However, a requirement to furnish those financial statements would modify significantly the foreign private issuer's interim and current events reporting requirements, which rely generally on home country standards and already contemplate that investors in securities of foreign private issuers will not necessarily receive the information customarily provided by domestic issuers regarding significant business acquisitions. Consequently, no amendment to require a special report by foreign private issuers is adopted.

The Commission also had proposed to eliminate the requirement that issuers provide in registration statements audited financial statements of recently acquired businesses that, in the aggregate, but not individually, are significant at the 20% level.[22] Although a number of commenters supported elimination of the requirement, several commenters observed that individually insignificant businesses could be so numerous as to become material, or could be components of a broader acquisition plan that is material.

To address these concerns, the amendments adopted today provide that the acquisition of ''related businesses'' should be treated as a single business combination for purposes of determining the transaction's significance under Rule 3–05 and the periods for which financial statements of those businesses are required. The amendment codifies present staff interpretive practices concerning acquisitions of related businesses. The amended rule defines related businesses as businesses under common ownership or management or whose acquisitions are conditional on each other or on a single common condition.[23]

In addition, the amended rules require one year of audited financial statements of a majority of individually insignificant businesses acquired subsequent to the issuer's latest audited balance sheet date if, in the aggregate, the businesses are significant at a level exceeding 50%.[24] Accordingly, the amendment raises the threshold for the requirement to furnish financial statements of individually insignificant businesses from the present 20% level to 50%.

Although there may be other circumstances in which investors would want audited financial statements of individually insignificant businesses to be provided, the Commission believes that extending the requirement to other circumstances would unintentionally impose a costly and unnecessary burden. Existing rules permit the staff to exercise appropriate discretion where warranted in determining that financial statements in addition to those expressly required by a form should be provided for an adequate presentation of an issuer's financial condition, as well as to permit the omission of required financial statements where consistent with investor protection.[25]

Consistent with the proposal, the amendments do not modify the requirement to furnish audited financial statements of a business to be acquired if securities are being registered in connection with the acquisition of that business.[26] In such a registration statement, however, the issuer may rely on the amended rules with respect to omission of *other* pending or recently completed acquisitions. The amended rules apply to proxy statements and registration statements under the Exchange Act, but do not change the proxy statement requirement of Item 14 of Schedule 14A to provide financial statements of a business to be acquired.[27] Accordingly, the financial

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[18] See revisions to Rule 11–01 of Regulation S–X and Item 310(c) of Regulation S–B [17 CFR 210.11–01 and 228.310(c)].

[19] *See* Item 303 of Regulations S–K and S–B [17 CFR 229.303 and 228.303].

[20] Material terms, significant accounting policies applied, and certain summarized pro forma information must be included with respect to material business combination in a note to financial statements for the period in which the transaction occurs. *See* paragraphs 95 and 96 of *Accounting Principles Board Opinion No. 16*, ''Business Combinations.'' Comparable summary disclosure is required in interim financial statements pursuant to Rule 10–01(b)(4) of Regulation S–X [17 CFR 210.10–01(b)(4)].

[21] *See* Item 2 and Item 7 of Form 8–K [17 CFR 249.308]. Also, under the rules as revised, an issuer, other than a foreign private issuer, that omits financial statements of a recently consummated business combination from its *initial* registration statement in reliance on the new rules must furnish those financial statements, and related pro forma information, within 75 days of the consummation of the acquisition under cover of Form 8–K.

[22] Under the former rules, if the businesses in aggregate exceeded the 20% level under the tests for significance, the issuer was required to furnish audited financial statements of the most recent fiscal year for a majority of the individually insignificant businesses. *See* Rule 3–05(b)(i) of Regulation S–X.

[23] *See* revisions to Rule 3–05(a)(3).

[24] Instructions to Item 2 of Form 8–K are amended to clarify that acquisitions of individually insignificant businesses do not result in a reporting requirement under that item unless the businesses are related businesses, as defined. *See* revisions to Instruction to Item 2 of Form 8–K.

[25] 17 CFR 210.3–13.

[26] Forms S–4 and F–4 do provide certain accommodations with respect to acquirees that are not reporting companies under the Exchange Act. *See* Item 17 in each Form [17 CFR 239.25 and 34].

[27] If action is to be taken with respect to a merger, consolidation, acquisition or similar matters, financial statements of an acquired business that is the subject of the action are required pursuant to Item 14 [17 CFR 240.14a–101.14].

statements of the acquiree will continue to be required in registration statements and proxy statements delivered to shareholders in connection with the solicitation of their approval of the acquisition transaction or other investment decision.[28]

The revisions adopted today do not effect Rule 3–14 of Regulation S–X governing financial statements required for acquired operating real estate properties.[29] Several commenters expressed the view that clarification or modification of that rule was needed. In the future, the Commission may address generally disclosure requirements applicable to real estate partnerships, real estate investment trusts, and similar types of businesses. Because Rule 3–14 is intended to address unique features of that industry, such as the ''blind pool'' type of offering frequently used in the industry, the Commission has decided to consider revision of Rule 3–14 in the context of its evaluation of a more comprehensive disclosure scheme.[30]

III. Increased Significance Thresholds for Acquiree Financial Statements

The rules amended today raise the thresholds at which an acquired business will be considered significant enough to require the provision of its audited financial statements in filings made under either the Exchange Act or the Securities Act. Issuers are required to report under Form 8–K the acquisition of a significant business within 15 days of consummation of that transaction. Prior to today's amendments, issuers were required to furnish audited financial statements of the acquired business as soon as practicable thereafter, but no later than 60 days after the initial report on Form 8–K. Audited financial statements for one, two or three years were required if the acquired business was significant at the 10%, 20% or 40% levels, respectively.[31] A small business issuer could omit audited financial statements of an acquired business falling below the 20% level if they were not readily available, and could omit under similar circumstances the first of two years of financial statements required if the acquired business was between the 20% and 40% significance level. Financial statements for periods preceding the two most recent fiscal years are not required in filings by small business issuers.[32]

As originally proposed, the rules applicable to businesses acquired by small business issuers would be extended to all issuers, except that the present requirement applicable to all issuers other than small business issuers—that three years of audited financial statements must be furnished for acquirees exceeding the 40% significance level—would be retained.[33] The Commission requested comment as to the appropriate significance threshold for determining when financial statements that are not readily available should be waived.

As discussed above, many commenters criticized the ''readily available'' criterion because of the possibility of different interpretations and, therefore, different levels of disclosure based on factors such as an issuer's discretionary scheduling of activities necessary to furnish the financial statements. In addition, several commenters favored raising the significance thresholds for required financial statements and believed that a requirement for readily available financial statements at lower thresholds was unnecessary. Several commenters expressed the view that imposition of the costs of providing financial statements of acquired businesses was justified only at thresholds higher than those in place currently.

The amendments to Rule 3–05 of Regulation S–X and Item 310 of Regulation S–B adopted today do not include a ''readily available'' criterion, and provisions of Item 310 of Regulation S–B are amended in a conforming fashion to eliminate requirements to furnish financial statements based on availability.[34] The amended rules provide that audited financial statements of an acquired business should be furnished for the most recent fiscal year if the significance of the acquiree exceeds 20%, for the most recent two years if significance exceeds 40%, and, except with respect to issuers making offerings under Regulation S–B and acquired businesses reporting annual revenues of less than $25 million, for the latest three years if the significance exceeds 50%. No financial statements will be required for acquisitions below the 20% significance threshold.[35]

The threshold at which audited financial statements of an acquired business are required for three years, as required for the issuer itself (except for small business issuers), has been raised from 40% to 50% in recognition of the significant burden imposed by the lower threshold. In addition, consistent with the criteria for small business issuers, financial statements for periods preceding the most recent two fiscal years would not be required for acquired businesses reporting revenues below $25 million.[36]

The revised rules are expected to be less subjective in their application. Also, they will accomplish the goal of reducing the burden of providing audited financial statements of acquired businesses, thereby increasing issuers' flexibility to make registered offerings without jeopardizing investor protection. Although investors will receive less information about some business acquisitions under the revised rules, the Commission believes that the benefits of the amendments outweigh that cost.

IV. Cost-Benefit Analysis

It is expected that the amendments will decrease registrants' costs and compliance burdens because the instances in which financial statements of acquired businesses and the number of years for which such financial statements are required will be reduced, enabling issuers to avoid the cost of preparing and auditing those statements. The amendments also are expected to reduce impediments to sales of securities in registered offerings, enabling companies the flexibility to

[28] The Commission may consider in the future certain recommendations to modify requirements for financial statements of nonreporting companies in registration statements relating to exchange offers. *See* Section VI.B.2 of the *Report of the Task Force on Disclosure Simplification*, published by the Commission on March 6, 1996.

[29] Audited income statements of significant acquired or to be acquired operating real estate properties are required to be furnished pursuant to Rule 3–14 of Regulation S–X and Item 310(e) of Regulation S–B [17 CFR 210.3–14 and 228.310(e)]. The income statements are required to be presented only for the most recent fiscal year, regardless of significance, if the property is not acquired from a related party and the registrant is not aware of any material factors relating to the specific property that would cause the reported financial information not to be necessarily indicative of future operating results. The income statements may exclude items not comparable to the proposed future operation of the property, such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes.

[30] *See* Section IX.E. of the *Report of the Task Force on Disclosure Simplification*, published by the Commission on March 6, 1996, which discusses recommendations to streamline and update requirements of Industry Guide 5 pertaining to partnerships and REITs.

[31] *See* General Instructions and Items 2 and 7 of Form 8–K.

[32] *See* Item 310 of Regulation S–B [17 CFR 228.310].

[33] See old Item 310(c) of Regulation S–B [17 CFR 228.310(c)].

[34] *See* revisions to Item 310(c) of Regulation S–B. Also, a technical correction revises a reference in Form 8–K to paragraphs of Item 310 of Regulation S–B. *See* revisions to the General Instructions to Form 8–K.

[35] *See* revisions to Rule 3–05 of Regulation S–X and Item 310(c) of Regulation S–B.

[36] *See* Item 10 of Regulation S–B [17 CFR 228.10].

raise capital at a lower cost that may be available through unregistered sales.

V. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,[37] regarding the amendments to Rule 3–05 of Regulation S–X, Item 310 of Regulation S–B, Form S–4 and Form F–4 and Form 8–K. The analysis notes that these amendments relating to financial statement requirements for acquired businesses will provide issuers greater flexibility and efficiency in accessing the public securities markets.

As stated in the analysis, the amendments would eliminate certain requirements that a company registering securities under the Securities Act provide information, including audited financial statements, in the registration statement about significant acquisitions from such time as the acquisition is probable, and provide an automatic waiver in some circumstances for such financial statements under the Exchange Act. The reduction in expense, time and effort resulting from the elimination of this requirement will benefit all entities that issue securities in the United States, including small entities. An additional expected benefit of the amendments would be that offerings may be registered for sale in the United States in situations where hitherto investors in the United States would have been excluded due to the time and expense involved in registration. A resulting increase in registered offerings in the United States by issuers could be expected to increase ease of investment for small U.S. entities acting as investors.

As stated in the analysis, the proposed amendments would eliminate certain requirements that a company registering securities under the Securities Act provide information in a registration statement, including audited financial statements, about significant acquisitions from such time as the acquisition is probable, and would provide an automatic waiver in some circumstances for such financial statements under the Exchange Act.

It is expected that the new rules will decrease reporting, recordkeeping and compliance burdens for persons that are small entities, as defined by the Commission's rules. The Commission is aware of approximately 1,100 reporting companies that currently satisfy the definition of ''small business'' under Rule 157. With respect to the amended Securities Act filing requirements, only small businesses that undertake a registered offering during the pendency of an acquisition will be affected. Of the above-referenced 1,100 companies, the Commission staff estimates that a maximum of approximately 50 companies will be affected in any single fiscal year. The Commission staff does not believe any will be negatively affected by these amendments. With respect to the amended Exchange Act reporting requirements, the Commission staff does not believe the amendments will have any significant effect on the such 1,100 companies. Therefore, the economic impact of the proposed amendments would be only to lessen the regulatory, reporting, recordkeeping and compliance burden on all reporting entities, both small and large.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Walter Van Dorn, Office of International Corporate Finance, Division of Corporation Finance at (202) 942–2990, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Paperwork Reduction Act

In June, 1995, the staff submitted to the Office of Management and Budget (''OMB'') for review proposals to amend the following information collections: Form 10, Form 8–K, Form S–1, Form S–2, Form S–3, Form SB–1, Form SB–2, Form 20–F, Form F–1, Form F–2, and Form F–3.[38] These information collections display an OMB control number and expiration date.[39] The information collections are required to be filed by companies registering securities under the Securities Act. The Commission solicited comment on the compliance burdens associated with the proposals but received no public comment on the burden estimates.

As discussed in Sections II and III of this release, some changes to the information collections are being adopted that differ from the proposed changes to such information collections. Specifically, audited annual and unaudited interim financial statements of business acquired or to be acquired will no longer be required in filings made under the Exchange Act or Securities Act with respect to individual acquisitions below the 20% significance level or individually insignificant acquisitions below the 50% significance level. Only one year of audited financial statements, rather than two years, will be required for acquisitions falling in the 20% to 40% significance levels; and only two years, rather than three years, of audited financial statements will be required for acquisitions falling in the 40% to 50% significance levels. The amendments also permit omission of audited financial statements of acquired businesses between the 20% and 50% significance levels from registration statements and proxy materials in certain circumstances, although those financial statements will be required at a later date in a Form 8–K. Although some of the differences will increase the total annual burdens estimated at the proposing stage, other differences will decrease the burdens estimated at the proposing stage. The overall effect is that the differences will not result in any significant changes to the total burden estimates that were submitted to OMB at the proposing stage.

VII. Statutory Bases

The foregoing amendments to the Commission's rules and forms are being adopted pursuant to sections 2, 3, 4 and 19 of the Securities Act of 1933 and 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 210, 228, 239, and 249

Accountants, Accounting, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

2. By amending § 210.3–05 by revising paragraphs (a)(3) and (b) to read as follows:

[37] 5 U.S.C. 603 (1988).

[38] There are no changes regarding the purpose, use or necessity of the information collections for which OMB approval was requested, nor are there changes to the estimates of reporting or recordkeeping burden expected to result from adoption of the proposed amendments. See the Proposing Release for estimates of changes in reporting or recordkeeping burden.

[39] Unless a currently valid OMB number is displayed, an agency may not sponsor or conduct or require response to an information collection pursuant to 44 U.S.C. § 3506(c)(1)(B).

§ 210.3–05 Financial statements of businesses acquired or to be acquired.

(a) * * *

(3) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed shall be treated under this section as if they are a single business combination. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. For purposes of this section, businesses shall be deemed to be related if:

(i) They are under common control or management;

(ii) The acquisition of one business is conditional on the acquisition of each other business; or

(iii) Each acquisition is conditioned on a single common event.

* * * * *

(b) *Periods to be presented.* (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N–14, S–4 or F–4 (§§ 239.23, 239.25 or 239.34 of this chapter). The financial statements covering fiscal years shall be audited except as provided in Item 14 of Schedule 14A (§ 240.14a–101 of this chapter) with respect to certain proxy statements or in registration statements filed on Forms N–14, S–4 or F–4 (§§ 239.23, 239.25 or 239.34 of this chapter).

(2) In all cases not specified in paragraph (b)(1) of this section, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph (b)(2) or such shorter period as the business has been in existence. The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 210.1–02(w) as follows:

(i) If none of the conditions exceeds 20 percent, financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50%, financial statements covering at least the substantial majority of the businesses acquired shall be furnished. Such financial statements shall be for at least the most recent fiscal year and any interim periods specified in §§ 210.3–01 and 210.3–02.

(ii) If any of the conditions exceeds 20 percent, but none exceed 40 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in §§ 210.3–01 and 210.3–02.

(iii) If any of the conditions exceeds 40 percent, but none exceed 50 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in §§ 210.3–01 and 210.3–02.

(iv) If any of the conditions exceeds 50 percent, the full financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished. However, financial statements for the earliest of the three fiscal years required may be omitted if net revenues reported by the acquired business in its most recent fiscal year are less than $25 million.

(3) The determination shall be made by comparing the most recent annual financial statements of each such business, or group of related businesses on a combined basis, to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8–K (§ 249.308 of this chapter) which included audited financial statements of such acquired business for the periods required by this section and the pro forma financial information required by § 210.11, such determination may be made by using pro forma amounts for the latest fiscal year in the report on Form 8–K (§ 249.308 of this chapter) rather than by using the historical amounts of the registrant. The tests may not be made by ''annualizing'' data.

(4) Financial statements required for the periods specified in paragraph (b)(2) of this section may be omitted to the extent specified as follows:

(i) Registration statements not subject to the provisions of § 230.419 of this chapter (Regulation C) and proxy statements need not include separate financial statements of the acquired or to be acquired business if it does not exceed any of the conditions of significance in the definition of significant subsidiary in § 210.1–02 at the 50 percent level, and either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The date of the final prospectus or prospectus supplement relating to an offering as filed with the Commission pursuant to § 230.424(b) of this chapter, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the business combination, and the financial statements have not previously been filed by the registrant.

(ii) An issuer, other than a foreign private issuer required to file reports on Form 6–K, that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (b)(4)(i) of this section shall furnish those financial statements and any pro forma information specified by Article 11 of this chapter under cover of Form 8–K (§ 249.308 of this chapter) no later than 75 days after consummation of the acquisition.

(iii) Separate financial statements of the acquired business need not be presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the registrant for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of such significance to the registrant that omission of such financial statements would materially impair an investor's ability to understand the historical financial results of the registrant. For example, if, at the date of acquisition, the acquired business met at least one of the conditions in the definition of significant subsidiary in § 210.1–02 at the 80 percent level, the income statements of the acquired business should normally continue to be furnished for such periods prior to the purchase as may be necessary when added to the time for which audited income statements after the purchase are filed to cover the equivalent of the period specified in § 210.3–02.

(iv) A separate audited balance sheet of the acquired business is not required when the registrant's most recent audited balance sheet required by § 210.3–01 is for a date after the date the acquisition was consummated.

* * * * *

3. By amending § 210.11–01 by revising paragraphs (b) and (c) to read as follows:

§ 210.11–01 Presentation requirements.

* * * * *

(b) A business combination or disposition of a business shall be considered significant if:

(1) A comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in § 210.1–02(w),

substituting 20 percent for 10 percent each place it appears therein; or

(2) The business to be disposed of meets the conditions of a significant subsidiary in § 210.1–02(w).

(c) The pro forma effects of a business combination need not be presented pursuant to this section if separate financial statements of the acquired business are not included in the filing.

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

5. By amending § 228.310 by revising paragraphs (c) and (d)(1), removing paragraph (d)(2), and redesignating paragraph (d)(3) as paragraph (d)(2), to read as follows:

§ 228.310 (Item 310) Financial Statements.

* * * * *

(c) *Financial Statements of Businesses Acquired or to be Acquired.* (1) If a business combination accounted for as a ''purchase'' has occurred or is probable, or if a business combination accounted for as a ''pooling of interest'' is probable, financial statements of the business acquired or to be acquired shall be furnished for the periods specified in paragraph (c)(3) of this Item.

(i) The term ''purchase'' encompasses the purchase of an interest in a business accounted for by the equity method.

(ii) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the issuer have been filed shall be treated as if they are a single business combination for purposes of this section. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. A group of businesses are deemed to be related if:

(A) They are under common control or management;

(B) The acquisition of one business is conditional on the acquisition of each other business; or

(C) Each acquisition is conditioned on a single common event.

(iii) Annual financial statements required by this paragraph (c) shall be audited. The form and content of the financial statements shall be in accordance with paragraphs (a) and (b) of this Item.

(2) The periods for which financial statements are to be presented are determined by comparison of the most recent annual financial statements of the business acquired or to be acquired and the small business issuer's most recent annual financial statements filed at or prior to the date of acquisition to evaluate each of the following conditions:

(i) Compare the small business issuer's investments in and advances to the acquiree to the total consolidated assets of the small business issuer as of the end of the most recently completed fiscal year. For a proposed business combination to be accounted for as a pooling of interests, also compare the number of common shares exchanged or to be exchanged by the small business issuer to its total common shares outstanding at the date the combination is initiated.

(ii) Compare the small business issuer's proportionate share of the total assets (after intercompany eliminations) of the acquiree to the total consolidated assets of the small business issuer as of the end of the most recently completed fiscal year.

(iii) Compare the small business issuer's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree to such consolidated income of the small business issuer for the most recently completed fiscal year.

Computational note to paragraph (c)(2): For purposes of making the prescribed income test the following guidance should be applied: If income of the small business issuer and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(3)(i) If none of the conditions specified in paragraph (c)(2) of this Item exceeds 20%, financial statements are not required. If any of the conditions exceed 20%, but none exceeds 40%, financial statements shall be furnished for the most recent fiscal year and any interim periods specified in paragraph (b) of this item. If any of the conditions exceed 40%, financial statements shall be furnished for the two most recent fiscal years and any interim periods specified in paragraph (b) of this item.

(ii) The separate audited balance sheet of the acquired business is not required when the small business issuer's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(iii) If the aggregate impact of individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50%, financial statements covering at least the substantial majority of the businesses acquired shall be furnished. Such financial statements shall be for the most recent fiscal year and any interim periods specified in paragraph (b) of this Item.

(iv) Registration statements not subject to the provisions of § 230.419 of this chapter (Regulation C) and proxy statements need not include separate financial statements of the acquired or to be acquired business if it does not meet or exceed any of the conditions specified in paragraph (c)(2) of this Item at the 50 percent level, and either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The effective date of the registration statement, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the business combination, and the financial statements have not been filed previously by the registrant.

(v) An issuer that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (c)(3)(iv) of this section shall furnish those financial statements and any pro forma information specified by paragraph (d) of this Item under cover of Form 8–K (§ 249.308 of this chapter) no later than 75 days after consummation of the acquisition.

(4) If the small business issuer made a significant business acquisition subsequent to the latest fiscal year end and filed a report on Form 8–K which included audited financial statements of such acquired business for the periods required by paragraph (c)(3) of this Item and the pro forma financial information required by paragraph (d) of this Item, the determination of significance may be made by using pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts of the registrant. The tests may not be made by ''annualizing'' data.

(d) *Pro Forma Financial Information.* (1) Pro forma information showing the effects of the acquisition shall be furnished if financial statements of a business acquired or to be acquired are presented.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1993

6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. By revising paragraph (b)(7) of Item 17 of Form S–4 (referenced in § 239.25) to read as follows:

Note: Form S–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form S–4

* * * * *

Item 17. Information with Respect to Companies Other Than S–3 or S–2 Companies.

* * * * *

(b) * * *

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a–3 (b)(1) and (b)(2) (§ 240.14a–3 of this chapter) or Rules 14c–3 (a)(1) and (a)(2) (§ 240.14c–3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the fiscal years required to be presented pursuant to paragraph (b)(2) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05).

* * * * *

8. By revising paragraph (b)(5) of Item 17 of Form F–4 (referenced in § 239.34) to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 17. Information with Respect to Foreign Companies Other Than F–3 or F–2 Companies.

* * * * *

(b) * * *

(5) Financial statements as would have been required to be included in an annual report on Form 20–F (17 CFR 249.220f) had the company being acquired been required to prepare such a report; *Provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the fiscal years required to be presented pursuant to paragraph (b)(2) of Rule 3–05 of Regulation S–X (17 CFR 210.3–05).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.,* unless otherwise noted;

* * * * *

10. By amending Form 8–K (referenced in § 249.308) by removing Instruction 2, by revising paragraph C.3 of the General Instructions, revising Instruction 4 of Item 2, and revising paragraph (a)(4) and Instruction 1 of Item 7 to read as follows:

Note: Form 8–K does not and these amendments will not appear in the Code of Federal Regulations.

Form 8–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Application of General Rules and Regulations

* * * * *

3. A ''small business issuer,'' defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2 of this chapter), shall refer to the disclosure items in Regulation S–B (17 CFR 228.10 et seq.) and not Regulation S–K. If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information required by Item 310 (c) and (d) of Regulation S–B in lieu of the financial information required by Item 7 of this Form.

* * * * *

Item 2. Acquisition or Disposition of Assets.

* * * * *

Instructions.

* * * * *

4. An acquisition or disposition shall be deemed to involve a significant amount of assets (i) if the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received therefor upon such acquisition or disposition exceeded 10 percent of the total assets of the registrant and its consolidated subsidiaries, or (ii) if it involved a business (see § 210.11–01(d)) which is significant (see § 210.11.01(b)). Acquisitions of individually insignificant businesses are not required to be reported pursuant to this item unless they are related businesses (see § 210.3–05(a)(3)) and are, in the aggregate, significant.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) * * *

(4) Financial statements required by this item may be filed with the initial report, or by amendment not later than 60 days after the date that the initial report on Form 8–K must be filed. If the financial statements are not included in the initial report, the registrant should so indicate in the Form 8–K report and state when the required financial statements will be filed. The registrant may, at its option, include unaudited financial statements in the initial report on Form 8–K.

* * * * *

Instructions. 1. During the period after a registrant has reported a business combination pursuant to Item 2 above until the date on which the financial statements specified by Item 7 above must be filed, the registrant will be deemed current for purposes of its reporting obligations under section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registrations statements will not be declared effective unless financial statements meeting the requirements of Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are provided. In addition, offerings should not be made pursuant to effective registrations statements or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 5–01(a) of that Regulation, until the audited financial

statements required by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are filed. *Provided, however,* that the following offerings or sales of securities may proceed notwithstanding that financial statements of the acquired business have not been filed:

(a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

Dated: October 10, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26561 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–7356; 34–37803; File No. S7–26–96; International Series Release No. 1022]

RIN 3235–AG85

Offshore Press Conferences, Meetings With Company Representatives Conducted Offshore and Press Related Materials Released Offshore

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is publishing for comment proposed safe harbors designed to facilitate U.S. press access to offshore press activities. The safe harbors would clarify the conditions under which journalists may be provided with access to offshore press conferences, offshore meetings and press materials released offshore, where a present or proposed offering of securities or tender offer is discussed, without violating the provisions of section 5 of the Securities Act, or the procedural requirements of the tender offer rules promulgated under the Williams Act.

DATES: Comments should be received on or before December 17, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comment letters also may be submitted electronically to the following electronic mail address: rule-comment@sec.gov. Comment letters should refer to File No. S7–26–96; this file number should be included in the subject line if electronic mail is used. All comment letters received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Luise M. Welby, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed rule[1] that would establish a safe harbor whereby an issuer, selling security holder, or their representatives, would not be deemed to have made an ''offer'' for the purposes of Section 5[2] of the Securities Act of 1933 (the ''Securities Act''), by virtue of providing any journalist, whether foreign or domestic, with access to press conferences held outside the United States, to meetings with issuer or selling security holder representatives conducted outside the United States, or to press related materials released outside the United States, at or in which a present or proposed offering of securities is discussed. Likewise, the Commission proposes amending existing rules[3] to make clear that providing such access would not be deemed ''directed selling efforts'' within the meaning of Regulation S[4] under the Securities Act, or a ''general solicitation'' within the meaning of Regulation D[5] under the Securities Act. In addition, a bidder for securities of a foreign private issuer, as well as the subject company, their representatives, or any other person specified in Rule 14d–9(d)[6] under the Securities Exchange Act of 1934 (the ''Exchange Act''), will not be subject to the filing and procedural requirements of Regulations 14D and 14E[7] under the Exchange Act, by virtue of providing any journalist, whether foreign or domestic, with access to its press conferences held outside the United States, to meetings with its representatives conducted outside the United States, or to press related materials released outside the United States, at or in which a present or proposed tender offer is discussed.

I. Background

In today's global securities markets, corporate transactions involving securities (whether public offerings, acquisitions, exchange offers or tender offers) are increasingly newsworthy events, regardless of where in the world these transactions are taking place. The U.S. financial press, and foreign publications with a general circulation in the United States, often provide news coverage of these transactions, even if the transaction does not involve U.S. companies and will not take place in the United States. In addition, in some foreign countries, companies offering securities, or soliciting tenders of securities, commonly conduct press conferences, issue press releases, and meet with members of the press when offering securities or conducting a tender offer. As contrasted with the traditional and permitted offering process in the United States which does not freely allow such activities to occur, these activities are not only permitted by foreign regulatory regimes, but in fact often are an integral part of the offering or tender offer process in some foreign jurisdictions.

The Commission has been made aware for a number of years that journalists for publications with a significant U.S. circulation (whether the publication is U.S.-based or foreign-based) have had difficulty obtaining direct access to offshore press conferences, offshore meetings with company representatives and press materials released offshore where a present or proposed offering of securities or tender offer is discussed. These journalists have been told by company representatives that their access to these events or materials is restricted because of uncertainty whether such access would result in a violation of the U.S. federal regulatory requirements for offerings of securities or tender offers.

The Commission has been sensitive to the concerns of journalists for publications with U.S. circulation that they not be denied access to the same information made available to journalists for foreign publications with minimal or no U.S. circulation when covering offshore offerings or tender offers and has provided prior guidance in this area. The Commission and staff already have taken a number of actions, both through rulemaking and interpretations, to address the problem of press access to information about offerings of securities by foreign companies,[8] including specific guidance in Regulation S stating that such contacts do not raise Securities Act registration concerns under certain circumstances.[9] Similarly, the

[1] Proposed Rule 135e.

[2] 15 U.S.C. 77e.

[3] Proposed amendments to Rule 502(c) of Regulation D (17 CFR 230.502(c)) and Rule 902(b) of Regulation S (17 CFR 230.902(b)).

[4] 17 CFR 230.901–230.904 and Preliminary Notes.

[5] 17 CFR 230.501–230.508 and Preliminary Notes.

[6] 17 CFR 240.14d–9(d). *See infra* n.29.

[7] 17 CFR 240.14d–1—240.14d–10; 17 CFR 240.14e–1—240.14e–2.

[8] *See generally* Securities Act Rules 135 (notice given by an issuer that it proposes to make a registered public offering of securities) and 135c (notice by an issuer that it proposes to make, is making, or has made an offering of securities not registered or required to be registered under the Securities Act), 17 CFR 230.135 and 230.135c.

[9] Preliminary Note 7 to Regulation S specifically states that: ''Nothing in these rules precludes access by journalists for publications with a general circulation in the United States to offshore press conferences, press releases and meetings with company press spokespersons in which an offshore offering or tender offer is discussed, provided that the information is made available to the foreign and United States press generally and is not intended to induce purchases of securities by persons in the United States or tenders of securities by United States holders in the case of exchange offers.'' *Supra* n.4.

Commission staff has emphasized that U.S. press coverage of tender offers for the securities of foreign companies does not trigger the procedural requirements of the Williams Act.[10]

Despite the previous efforts by the Commission and its staff to clarify this area, the Commission has been informed that U.S. journalists, and foreign journalists for publications or other news services with a general circulation in the United States, continue to be excluded from offshore press conferences and offshore meetings with representatives, and denied access to press related materials released offshore. Foreign issuers involved in global offerings with a public or private U.S. tranche continue to be concerned that contacts with journalists for publications with a general circulation in the United States could constitute ''gun jumping'' and thus improper offers under the Securities Act,[11] or a general solicitation in violation of a private offering exemption. Even where no U.S. offering is contemplated, foreign issuers conducting large newsworthy offshore offerings of securities in accordance with local offering practices also deny such journalists access to offshore meetings, news conferences and press materials due to concern that allowing such access would violate the prohibition on directed selling efforts under Regulation S. In addition, a foreign company that is either the bidder for the securities of another foreign company, or the subject of a present or proposed tender offer itself, may deny such journalists access to the same activities or materials due to concerns regarding triggering the filing and procedural requirements of the Williams Act. The Commission has been advised that continued concerns focus on uncertainty regarding the applicability of the language in previous Commission guidance that the provision of the access not be ''intended to induce'' participation in the offer by persons in the United States.

The U.S. Congress also has been aware of this continued exclusion and has expressed its concern through the legislative process. Recently passed legislation directs the Commission to adopt rules to address the applicability of the Securities Act to the issue of foreign press conferences and foreign press releases.[12]

In response to the concerns expressed by the press and the recently passed legislation, the Commission reiterates its previously expressed view that the U.S. federal securities laws do not require that journalists for publications with U.S. circulation be excluded from offshore press conferences, meetings, or other press coverage concerning offshore offerings or tender offers. The Commission believes that such access currently is provided for legitimate journalistic purposes consistent with traditional international practices, not to circumvent the U.S. federal securities laws. Moreover, in the Commission's view, the imposition of such a requirement would be meaningless in many instances in terms of investor protection, since denying access to journalists for publications with U.S. circulation does not prevent such journalists from indirectly receiving the information disseminated to the foreign press. Rather, the receipt of such information is merely delayed, thereby unnecessarily competitively disadvantaging the journalist denied direct access to the information. The proposed safe harbors are intended to reflect existing offering practices in certain foreign countries and level the playing field between U.S. and foreign journalists with respect to these practices, although the proposed rule does not require that press activities be limited to countries where such press activities are a traditional part of the offering process.

Moreover, the proposed safe harbors also would allow U.S. companies to avail themselves of local offering practices when conducting an offshore offering, or a tender offer for the securities of a foreign company. The Commission preliminarily believes that U.S. companies conducting offerings in foreign countries, or soliciting tenders of the securities of foreign companies, should be able to conduct the *offshore* portion of their offering or tender offer in the same manner as foreign issuers—*i.e.*, in accordance with local practice, such as by holding press conferences or meetings with the press, or by issuing press releases that discuss the offering or tender offer—without running afoul of U.S. securities regulations. Otherwise, U.S. issuers may be unfairly disadvantaged in their ability to raise capital in other countries, or to acquire the securities of foreign companies.

The proposed rules are intended to provide greater assurance to companies that such access does not implicate the procedural and filing provisions of the federal securities laws. The new rule, and amendment of existing rules, should eliminate perceived grounds for the exclusion of U.S. journalists, or journalists for foreign publications and other news services with a general circulation in the United States, from access to foreign press conferences, offshore meetings with representatives, or press related materials released offshore. The safe harbors proposed today address only the regulatory filing and disclosure requirements of Section 5 of the Securities Act and the Williams Act,[13] but not the antifraud, civil liability, or other provisions of the federal securities laws with respect to material misstatements or omissions in the press communications, whether oral or written.

The proposed safe harbors are intended to address a specific identified problem—to remove obstacles faced by journalists for publications with U.S. circulation in obtaining access to offshore press activities. The Commission recognizes that the proposed safe harbor is broad in application because it applies to press activities in any foreign country and can be utilized by any issuer conducting some portion of its offering offshore. This release includes specific questions about the appropriate scope of the proposed safe harbors.[14] These proposals, however, do not attempt to address, or to suggest a framework for addressing, broader policy questions, such as how publicity during the offering process should be regulated generally or the U.S. regulatory implications of the dissemination of information concerning present or proposed offerings or tender offers using electronic media such as the Internet in the international environment. The Commission's Securities Act Concept

[10] *See* Reuters Holding plc, SEC No-Action Letter (publicly available March 6, 1990), stating: ''* * * the Commission's rules are not intended to limit or interfere with news stories or other bona fide journalistic activities, or otherwise hinder the flow of normal corporate news. Access by American journalists or non-U.S. journalists whose reports are disseminated in the U.S. to offshore press conferences, press releases and company press spokesmen in which an offshore tender offer is discussed need not be limited where the information is made available to the foreign and U.S. press generally and is not intended to induce participation in the offer by U.S. holders.''

[11] *See* Report of the Task Force on Disclosure Simplification to the Securities and Exchange Commission (March 5, 1996), at 33.

[12] H.R. 3005, the National Securities Markets Improvements Act of 1996, which was recently passed by the Congress and is awaiting the signature of the President, recognizes this problem and directs the Commission to conduct rulemaking to clarify the status under the Securities Act of offshore press activity.

[13] If a proposed transaction potentially could implicate both the Securities Act and the Williams Act (for example, an exchange offer), the provisions of the Securities Act safe harbor would be available for relief under the Securities Act, and the tender offer safe harbor would provide relief with respect to the Williams Act, assuming that all the conditions of the respective safe harbors are satisfied.

[14] *See infra* p. 14–16, and p. 24–27.

Release issued in July 1996[15] raises a number of questions, and presents a variety of approaches, to dealing with some of these issues in the context of an overall framework.

II. Proposals

A. Securities Act Safe Harbor

Under the proposed Securities Act safe harbor, an issuer, selling security holder, or their representatives, would not be deemed to have (i) made an offer for purposes of Section 5; (ii) engaged in a general solicitation or general advertising within the meaning of Regulation D; or (iii) engaged in ''directed selling efforts'' within the meaning of Regulation S, by allowing journalists access to offshore press conferences, meetings with issuer or selling security holder representatives conducted offshore, or press related materials released offshore, where or in which a present or proposed offering of securities is discussed, provided certain conditions are met. As described below, these four conditions require that the press activity be conducted offshore, at least part of the offering be conducted outside the United States, that the access also be provided to foreign press, not just the U.S. press, and that any written materials to which journalists are provided access under the safe harbor that are related to certain offerings likely to have significant U.S. investor interest contain a cautionary legend and do not attach any form of purchase order or coupon that could be returned to express interest in the offering.

As noted above, the safe harbor relates solely to the applicability of the registration requirements of Section 5 of the Securities Act and does not limit in any way the scope or applicability of the antifraud or other provisions of the federal securities laws, including Sections 12(a)(2) and 17(a) of the Securities Act, relating to both oral and written material misstatements and omissions in the offer and sale of securities.

1. Use of an Objective Test

Prior Commission and staff guidance concerning foreign press activities has stated that such activities generally do not raise concerns *provided that* they are not undertaken for the purpose of inducing purchases of securities by persons in the United States.[16] As stated above, the Commission understands that this ''intent'' standard is considered by issuers and their counsel to be too subjective and causes many issuers to continue to feel uncomfortable about admitting journalists for publications with a general circulation in the United States to offshore press activities. It also is the Commission's understanding that offshore press conferences, meetings with representatives conducted offshore, and the release of press related materials offshore, are conducted today based on local practices and for legitimate business purposes—not to induce participation in the offering by persons in the United States without the protections of the U.S. federal securities laws. Consistent with this background and to increase the utility of the safe harbor, the Commission is proposing a purely objective test—no intent or similar subjective elements are included. In the event that abusive practices designed to evade the investor protection mandate of the federal securities laws develop under the proposed safe harbor, the Commission will revisit some or all portions of the rules as appropriate.

Comment is requested as to whether this lack of an ''intent'' requirement is appropriate, or whether a subjective standard should continue to apply. If a subjective standard is appropriate, should the same ''inducement'' standard be retained, or would a different subjective standard be more appropriate? Would the absence of an intent element permit conduct that, while in technical compliance with the safe harbor, nevertheless is inconsistent with the purposes of the Securities Act? Conversely, if an intent element were included as a condition of the safe harbor, would issuers continue to exclude U.S. press?

2. Coverage of the Safe Harbor

The proposed Securities Act safe harbor would apply to the definition of ''offer'' for the purposes of Section 5, the concept of ''directed selling efforts'' under Rule 902(b) of Regulation S, and ''general solicitation'' under Rule 502(c) of Regulation D. Consequently, the safe harbor would be available in each of the following situations:

- An offshore offering that will include a registered U.S. tranche;
- An offshore offering that will not include any U.S. offering (whether registered or exempt); and
- An offshore offering that will include a U.S. tranche not registered in reliance upon the Section 4(2) private placement exemption or any other available Securities Act exemption.

The Commission proposes to make the safe harbor available for each of these situations based on the Commission's understanding that offshore press activities traditionally have occurred in each of these cases and journalists for publications with a circulation in the United States have been excluded due to perceived problems with Commission rules. Thus, the safe harbor would not be available for an offering exclusively in the United States, because similar press activities in the United States have been viewed as inconsistent with offering practices in the United States due to, among other things, a concern that these press activities may be used to ''condition the market.''

Comment is requested whether the proposed application of the safe harbor in each of the situations enumerated above is appropriate. For example, is it appropriate, as proposed, to provide protections for these activities when a U.S. private placement is planned? Are there types of offerings, such as initial public offerings, that should be excluded from the safe harbor? Are there any other contexts not covered by the proposed safe harbor in which the proposed safe harbor should be applied? Should the safe harbor apply to press activities, whether offshore or in the United States, in connection with offerings exclusively in the United States? Do U.S.-only offerings have unique characteristics that would make these press activities inappropriate?

As currently proposed, all domestic and foreign issuers conducting offshore offerings would be eligible for the safe harbor, regardless of the type of issuer, and whether it files periodic reports under the Exchange Act with the Commission. The Commission preliminarily believes that ''issuer'' limitations of this kind would be inconsistent with the purposes of the proposed safe harbor and would not further investor protection. Restricting the access of U.S. journalists to offshore press activities of specified classes of issuers would not appear to prevent the information from reaching U.S. persons—it merely delays the receipt and places U.S. journalists at a competitive disadvantage. Comment is requested, however, whether issuer eligibility requirements should be imposed. First, as discussed above, the safe harbors would be available to domestic issuers conducting offerings that include an offshore tranche so that domestic and foreign issuers would be on equal footing in seeking capital offshore. Is it appropriate to include domestic issuers, or would their inclusion raise concerns that these issuers might be more likely to use offshore press activities to evade important investor protections provided by the federal securities laws?

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[15] Securities Act Rel. 7314 (July 25, 1996) [61 FR 40044 (July 31, 1996)].

[16] *See supra* n.9 and n.10.

Assuming domestic issuers are included, should different eligibility standards apply to domestic issuers than to foreign issuers? For example, should only large multinational domestic companies be covered, or should smaller companies be eligible as well? Would it be appropriate to limit the safe harbor for domestic companies to those eligible to use Form S–3 for a primary common stock offering based on, among other things, an assumption that their activities are followed by the press? Should the threshold be higher than the current Form S–3 eligibility requirements? Should any distinction depend on whether the domestic issuer will be conducting any portion of the offering in the United States, and if so, how?

Comment also is requested whether there are classes of issuers, whether foreign or domestic, that should not be eligible for the safe harbor. For example, are there classes of issuers who lack legitimate (*i.e.*, non-market conditioning) reasons to inform the press of their offering activities due to their small size or lack of press following? Should historically ''problematic'' types of issuers (*e.g.*, partnerships, blank check companies or penny stock issuers) be excluded from the proposed rule?

The Commission also proposes that the safe harbor be available for selling security holders as well as issuers. The Commission staff has been informed that governments conducting privatizations, or holding companies conducting demergers, often avail themselves of local offering practices when offering securities as selling security holders. Comment is requested whether selling security holders should be able to avail themselves of the safe harbor.

In addition, the Commission does not propose limiting relief to press conferences or meetings held only by the issuer or a selling security holder, or press related materials released by either of them. Rather, the proposed safe harbor also would cover any of such activities conducted by representatives of the issuer or the selling security holder, such as underwriters and public relations firms. The Commission preliminarily believes that the safe harbor should be available to issuers and selling security holders that use agents and other advisers to conduct their press related activities; on the other hand, there does not appear to be any need to extend the safe harbor to press related activities of persons with no relationship to the issuer. Comment is requested as to the appropriateness of the applicability of the safe harbor to activities conducted by entities or individuals other than the issuer or the selling security holder. Should the Commission specifically define who or what parties would constitute ''representatives'' of the issuer or the selling security holder? Should such definition be inclusionary or exclusionary in nature?

The Commission is not proposing a definition of ''journalist'' as part of the proposed safe harbor. It is expected that the term ''journalist'' would be broadly interpreted to cover reporters and other representatives of news services. Comment is requested whether the Commission should include a definition of the term ''journalist'' as part of the proposed safe harbor, and if so, according to what criteria.

The Commission also does not propose limiting the safe harbor to journalists for publications with a specified minimum U.S. circulation or to any particular news medium. In the Commission's view, journalists for smaller publications, newsletters and other services should benefit from the safe harbor as well. Is this view appropriate, or should the safe harbor be limited to large international news organizations only? If the latter approach is used, should the rule define ''international news organization,'' and if so, how?

The Commission is concerned, however, that the safe harbor be available only for legitimate meetings with, or releases to, members of the press. Therefore, the safe harbor would not cover paid advertisements.[17] Should the Commission define ''paid advertisements'' or provide further interpretive guidance on the ability to utilize wire services that the issuer pays to run its press releases and other news items? Also, the Commission would not consider analysts' reports to come within the new safe harbor—analysts' reports would continue to be governed by the existing Securities Act research report rules, such as Rules 138 and 139.[18] The benefit of the safe harbor to issuers or selling security holders with respect to oral or written communications to journalists would not become unavailable, however, merely because nonjournalists attend the press conferences or meetings, or have access to the press related materials.

The proposed rule would not restrict the content of the information that may be discussed during the press related activities. The Commission preliminarily is concerned that such a restriction would limit the ability of issuers to use the safe harbor or that U.S. journalists may continue to be excluded from offshore press activities where the issuer expects the content to exceed the scope of the rule. Comment is requested whether the proposed safe harbor should limit the information that may be discussed at the press conference or meeting. Further, should the information set forth in any written press related materials released under the safe harbor be restricted (*e.g.*, similar to the restrictions in Rules 135 or 135c under the Securities Act)? Should the rule limit the type or nature of written materials that may be distributed to the press under the safe harbor (*e.g.*, press releases, prospectuses, sales literature)?

3. Conditions To Minimize Possibility of Abuse

The Commission is concerned that, in the future, issuers may attempt to use the new procedural protections of the safe harbor to circumvent important Securities Act protections. Consequently, the proposed safe harbor includes certain conditions that may minimize the possibility of abuse. Comment is requested generally whether there is a different approach that would accomplish the Commission's stated objectives consistent with investor protection.

a. *Press Activity Must Take Place Offshore.* Under the proposed safe harbor, the press conference or meeting with issuer or selling security holder representatives to which access is provided to journalists must be conducted outside the United States, and any press related materials to which access is provided to journalists must be released outside the United States. The proposed safe harbor is intended to be a narrow statement regarding whether the procedural and filing requirements under the U.S. federal securities laws are triggered by allowing journalists for publications with U.S. circulation access to certain offshore press

[17] For similar statements previously made by the Commission regarding paid advertisements, *see* the definition of ''directed selling efforts'' under Regulation S, stating that directed selling efforts would include the ''placement of an advertisement in a publication with a general circulation in the United States that refers to the offering of securities being made in reliance upon this Regulation S.'' 17 CFR 230.902(b)(1). *See also Offshore Offers and Sales,* Securities Act Rel. 6863 (April 24, 1990) [55 FR 18306 (May 2, 1990)], stating that the prohibition in Regulation S against ''directed selling efforts'' would preclude, among other things, activities such as ''placing advertisements with radio and television stations broadcasting into the United States or in publications with a general circulation in the United States, which discuss the offering or are otherwise intended to condition, or could reasonably be expected to condition, the market for the securities purportedly being offered abroad.''

[18] 17 CFR 230.138 and 230.139.

activities, recognizing that foreign offering practices differ from the U.S. offering practices currently permitted under the U.S. federal securities laws.[19] Comment is requested whether this narrow approach is appropriate. Should it matter under the proposed safe harbor where the press activity takes place? Should U.S. and foreign issuers be able to conduct press activity in the United States without triggering the procedural and filing requirements of the federal securities laws? If extended to cover press activity in the United States, should the applicability depend on the type of offering (registered or exempt), the type of security to be offered (*e.g.*, debt or equity), or the type or size of issuer of the securities to be offered (*e.g.*, foreign or domestic, Exchange Act reporting or nonreporting, eligible for Form S–3/F–3), or otherwise? Under each scenario, commenters are requested to address what liability standard should apply to any statements made or written materials released within the United States, and whether any written materials released in the United States should be required to be filed with the Commission.

With respect to written press related materials, the condition that the access take place offshore would require that the journalist receive such material at an offshore address. Thus, for example, materials sent by facsimile or electronic mail to an offshore address would satisfy this condition; materials sent to a U.S. address would not. Comment is requested whether this distinction is appropriate or necessary.

The Commission recognizes that the evolution of communications technology increasingly has blurred geographic boundaries. Is it appropriate to require that U.S. journalists travel offshore or maintain foreign offices in order to have access to issuer press activities in compliance with this condition, particularly where the information eventually may be disseminated in the United States? How should follow-up conversations be treated when a U.S. journalist attends offshore press activities and returns to the United States? Should the rule provide guidance on whether follow-up activities can take place with one participant in a communication being physically located in the United States? Should the rule contain geographical restrictions at all, or, alternatively, should the rule require that only part of the press activity take place offshore (*e.g.*, a ''conference call'' press conference originating offshore at which U.S. journalists within the geographic boundaries of the United States participate)? Is there any particular potential for abuse from press activities with all or part of the activity physically located in the United States? Is potential for abuse eliminated or reduced by requiring the activity to take place offshore?

b. *Offshore Offering.* The Commission is proposing as a condition to the safe harbor that the offering cannot be conducted *solely* in the United States. In this way, issuers cannot claim the protections of the safe harbor for offshore press activities where there is no offshore nexus or apparent reason for conducting offshore press activities. As currently proposed, if any portion of the offering is offshore, this condition would be satisfied. Comment is requested whether the Commission should require as a condition of the safe harbor that a minimum amount of the offering take place offshore, and whether such requirement should include a quantifiable standard or not. It is the Commission's understanding that some global offerings do not have separately identifiable tranches, or that such tranches may not be identified until after the offshore press activity takes place. Consequently, at the time of the offshore press activity, the issuer or selling security holder may not know how much of the offering ultimately will be conducted in the United States, if any. This potential uncertainty in advance of the offering as to whether the standard would be met may make it more difficult for issuers to rely on the safe harbor, thus limiting its utility.

Comment is sought on whether the Commission should require that a certain amount of the offering be conducted outside the United States, *e.g.*, a ''minimal'' amount of the offering, a ''majority'' of the offering, or a ''substantial'' amount of the offering. Should the portion to be conducted outside the United States be quantified (*e.g.*, 10%, 25%, 50%, or some other percentage), and if so, how should such standard be defined (*e.g.*, as a percentage of the total offering, as a percentage of the issuer's outstanding securities, or otherwise)? Should the same standard apply to all issuers, or should the standard differ depending on whether, for example, the issuer is a foreign or domestic issuer, Exchange Act reporting or nonreporting, eligible for Form S–3/F–3, or otherwise? Should the standard depend on the type of offering (registered or exempt), or the type of security to be offered (*e.g.*, debt or equity)?

c. *Access Provided to Both U.S. and Foreign Journalists.* As noted, the purpose of the proposed rule is to remove uncertainties that impede the ability of issuers and selling security holders to allow U.S. journalists, and journalists for foreign publications or other news services with a general circulation in the United States, the same access to press conferences, press materials and meetings with representatives that non-U.S. journalists have. The safe harbor is not designed as a means for issuers and other offering participants to channel widespread publicity regarding the offering exclusively into the United States. To limit the rule's ability to be used in this manner, the proposed rule requires that ''access is provided to both U.S. and foreign journalists,'' *i.e.*, that whatever is made available to U.S. journalists also must be made available to foreign journalists. For example, an issuer would not qualify for the safe harbor if it held an offshore press conference and *only* allowed U.S. journalists to attend. Comment is requested whether this requirement is appropriate or necessary for investor protection. Are there any circumstances where excluding all or certain non-U.S. journalists would be consistent with the purposes of the proposed safe harbor? Assuming that press activity takes place offshore and subsequently is reported in the United States, does requiring that foreign journalists have ''access'' provide additional investor protections? Should the status of the issuer (*e.g.*, foreign or domestic, Exchange Act reporting or nonreporting, eligible for Form S–3/F–3) affect the applicability or interpretation of this condition? Should the type of offering, or the type of security to be offered, matter?

The focus of this provision of the proposed rule is on the access—not whether in fact any foreign journalists attend the offshore press conference or meeting with representatives, or receive the press related materials. The Commission preliminarily believes that it may be burdensome to require that foreign journalists actually take part since their attendance or receipt of materials likely is beyond the issuer's control. Comment is requested whether this approach is appropriate. With respect to meetings with the issuer, selling security holder, or their

[19] Under the U.S. federal securities laws, unless exempted, no written or oral offers of securities may be made prior to filing a registration statement with the Commission. After filing, oral offers may be made, but written offers may only be made through the delivery to a prospective investor of a document containing the information mandated by Section 10 of the Securities Act. Consequently, press conferences conducted by issuers or their representatives in the United States or press releases released by issuers or their representatives in the United States prior to or during the registration process in which a present or proposed offering of securities is discussed may violate the U.S. federal securities laws.

representatives, under the proposed safe harbor, the ability to request a meeting must not be limited to U.S. journalists. In this regard, the Commission staff has been informed that, in some countries, ''one-on-one'' presentations are commonly conducted during the offering process and as part of the offering process. Thus, this requirement would not prohibit ''one-on-one'' presentations to a U.S. journalist, so long as ''one-on-one'' meetings also are made available to foreign journalists.

The Commission staff also has been informed that some ''one-on-one'' presentations are granted to a journalist on an ''exclusive'' basis. Therefore, it is conceivable that an issuer or its representatives might only conduct a single ''one-on-one'' interview. The Commission does not intend for this requirement to prevent journalists for publications with a general circulation in the United States from competing for such exclusive interviews.

The Commission preliminarily believes, however, that exclusive ''one-on-one'' presentations to *purely domestic* publications *in the absence of* any other press contact during the offering may be indicative of a scheme to channel publicity regarding the offering into the United States, rather than for legitimate journalistic purposes, and therefore, are not covered by the proposed safe harbor. However, if prior to or subsequent to the exclusive ''one-on-one,'' the issuer or its representatives conducts a press conference complying with the requirements of the proposed safe harbor, *i.e.*, both U.S. and foreign journalists are allowed access, then this requirement will be deemed satisfied with respect to the exclusive ''one-on-one'' to a purely domestic publication as well.

Comment is requested whether this interpretation regarding exclusives is appropriate or necessary for investor protection. Are exclusive ''one-on-one'' meetings with purely domestic publications potentially indicative of an improper scheme to channel publicity into the United States? Is any potential for abuse lessened by requiring other press activities to which foreign journalists have access? Would it be too burdensome on issuers to require that other press activities beyond an exclusive ''one-on-one'' meeting take place, thereby leading issuers to deny exclusives to journalists with a general circulation in the United States? Is the potential for abuse any greater than if a foreign journalist, or a journalist for a news service with both foreign and domestic circulation, conducts an exclusive ''one-on-one'' meeting and the U.S. press reports the same information secondhand? Should exclusive ''one-on-one'' meetings be covered by the safe harbor at all?

d. *Written Materials Requirements.* With regard to any written materials released to U.S. journalists under the safe harbor, the Commission is concerned that such written materials be released to journalists for legitimate press purposes, and not for the purpose of offering securities in the United States without the protections of the federal securities laws, or conditioning the market in the United States for the securities to be offered. In certain offers where there is likely to be a significant interest in the offering by U.S. investors, the Commission is proposing additional procedural safeguards for written materials in order to alert U.S. investors that these materials are not to be considered an offer of securities for sale in the United States, and that when and if an offer is made in the United States, the appropriate required disclosure will be disseminated at that time.

As proposed, where the written materials released under the proposed safe harbor discuss (i) any offering of the securities of a domestic issuer (whether registered or exempt or conducted wholly offshore), or (ii) any offering of the securities of any foreign private issuer[20] where part of the offering is or will be conducted in the United States (whether registered or exempt), the following ''Written Materials Requirements'' must be satisfied:

- The materials must include the following information:[21]

fl A statement that the materials are not an offer of securities for sale in the United States;

fl A statement that the securities may not be offered or sold in the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or selling security holder and that will contain detailed information about the company and management, as well as financial statements;

fl A statement that no money, securities or other consideration is being solicited, and, if sent in response by a U.S. resident, will not be accepted;

fl If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, a statement regarding this intention; and

- The issuer or selling security holder cannot attach to, or otherwise make a part of, the written materials any form of purchase order or coupon that could be returned indicating interest in the offering.

Comment is requested as to whether the addition of the Written Materials Requirements, in whole or in part, will be effective in deterring the use of the written materials for the purpose of conditioning the market in the United States for the securities to be offered, and if not, why not. Do written materials present more danger of market conditioning than oral statements reported by the press, and if so, why? To what extent do issuers conducting offshore press activities disseminate written materials? In addition, are each of the Written Materials Requirements necessary and appropriate for their stated purpose? Will the Written Materials Requirements unnecessarily deter reliance on the safe harbor by issuers and selling security holders? Are there alternative or additional procedural or substantive requirements that could or should be imposed on written materials released offshore, and if so, what kind? Should the Written Materials Requirements be imposed on all offerings by domestic issuers, and all offerings by foreign issuers that will include a U.S. tranche, or should the applicability depend upon some other criteria, such as, among others, the type of offering (registered or exempt), the type of security to be issued (*e.g.*, debt or equity), or the type of issuer of the securities to be offered (*e.g.*, foreign or domestic, Exchange Act reporting or nonreporting, eligible for Form S–3/F–3)? Should a different definition of a foreign issuer be used rather than the current definition of ''foreign private issuer,'' as defined in Rule 405 under the Securities Act?[22]

The Commission does not currently believe that it is necessary to impose the

[20] ''Foreign private issuer'' is defined in Securities Act Rule 405. Under the rule, a foreign private issuer is any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) more than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are United States citizens or residents, (ii) more than 50 percent of the assets of the issuer are located in the United States, or (iii) the business of the issuer is administered principally in the United States. 17 CFR 230.405.

[21] The statements required under the proposed Written Materials Requirements are similar to information currently required under other Commission rules. *See* Securities Act Rule 254 (solicitation of interest document for use prior to an offering statement) and Securities Act Rule 135c (notice by an issuer that it proposes to make, is making, or has made an offering of securities not registered or required to be registered under the Securities Act), 17 CFR 230.254 and 230.135c.

[22] *See supra* n.20.

Written Materials Requirements on wholly offshore offerings of the securities of foreign issuers since these offerings would appear to be of less significant interest to U.S. investors, and therefore, foreign issuers would be less likely to release written materials offshore for the purpose of conditioning the U.S. market for the securities to be offered. Comment is requested whether there are some wholly offshore offerings by foreign issuers that would appear more likely to be of significant interest to U.S. investors, and thus, possibly should require the additional protections of the Written Materials Requirements. For example, should the Written Materials Requirements be imposed on wholly offshore offerings of the securities of foreign issuers with a ''substantial U.S. market interest'' (as currently defined in Regulation S)[23] in the class of securities to be offered or sold (or, in the case of an exchange offer, the securities to be tendered) at the time of the offering? Would any other distinction be more appropriate?

Should the Written Materials Requirements be imposed on all written materials released under the safe harbor, or just certain types—*e.g.*, press releases, prospectuses, sales literature? Should it matter for the purposes of imposing the Written Materials Requirements whether the written materials are released at an offshore press conference or some other type of offshore meeting with issuer or selling security holder representatives, or just pursuant to a press release issued offshore without a press conference or other meeting?

The Commission intends that written materials released to the press under the safe harbor be for legitimate press purposes, not for the purpose of offering securities in the United States without the protections of the federal securities laws. For this reason, the Commission currently proposes prohibiting the issuer or selling security holder from attaching to, or otherwise making a part of, the written materials any form of purchase order or coupon that could be returned indicating interest in the offering. Comment is requested whether this prohibition is appropriate and accomplishes this stated objective. Would any other alternative approach, such as prohibiting the acceptance of purchase orders at the press conference or meeting, be more appropriate? Should this limitation only apply where the offer will be extended into the United States?

While the Commission does not intend to interfere with customary news coverage of offshore offerings, previous Commission guidance has made clear that the press activities should not be intended to generate buying interest (''condition the market'') in the United States for any securities offered or to be offered. Where the issuer or selling security holder intends to register part or all of the offering in the United States, the Commission is concerned that they might conduct prefiling offering activities offshore, including releasing written materials outside the registration process to the U.S. press, for the sole purpose of conditioning the market in the United States for those securities. Consequently, where an issuer, whether foreign or domestic, or a selling security holder intends to file a registration statement with the Commission registering any part of the offering, the Commission requests comment as to whether there should be a requirement in that context that the registration statement for the offering be filed as a precondition to reliance on the proposed safe harbor. If a prefiling of the registration statement is required, should such registration statement be required to contain all information required to be included in a preliminary prospectus under Section 10(a)[24] of the Securities Act, or would a simplified registration statement be sufficient, with the normal, full information regarding the issuer and the offering filed by amendment as the offering proceeds? Would such a prefiling requirement lead issuers or selling security holders to exclude U.S. press because they might not believe that the benefits of allowing access to U.S. press outweigh whatever burden is imposed by a prefiling requirement?

The Commission also is considering whether any written materials covered by the safe harbor should be required to be filed with the Commission. The Commission currently does not believe that a filing requirement is appropriate because it would appear to impose a burden that might deter otherwise appropriate access for U.S. press. Comment is requested whether the Commission's belief is correct, and whether any written materials should be required to be filed with the Commission, and if so, according to what criteria: whether the offering is being conducted in the United States (either registered or exempt), the type of issuer (*e.g.*, foreign or domestic, Exchange Act reporting or nonreporting), type of offering (debt or equity), or otherwise. If the materials are to be filed with the Commission, how should they be treated for liability purposes? If any part of the offering is to be registered in the United States, would such materials be filed as part of the registration statement, as part of the Section 10(a) prospectus, both, or neither? Should the written materials be treated in the same manner as ''Test the Waters'' materials under Regulation A?[25] If not registering, should these written materials nevertheless be required to be filed, and should such decision depend on whether the issuer is a reporting company? If required to be filed, should the written materials be filed on Form 8–K, or merely furnished to the Commission similar to the treatment of Form 6–Ks and materials furnished under Rule 12g3–2(b) by foreign private issuers?[26]

B. Tender Offer Safe Harbor

The Commission also is proposing to address concerns about access to foreign press conferences and press materials in

[23] Under Rule 902(n) of Regulation S, with respect to a class of an issuer's equity securities, ''substantial U.S. market interest'' is defined as: (i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or (ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation. With respect to an issuer's debt securities, ''substantial U.S. market interest'' is defined as: (i) Its debt securities and the securities described in 230.903(c)(4)(1) and (ii) (*i.e.*, certain non-participating preferred stock and asset-backed securities), in the aggregate, are held of record by 300 or more U.S. persons; (ii) $1 billion or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in 230.903(c)(4)(i) (*i.e.*, certain non-participating preferred stock), and the principal amount or principal balance of its securities described in 230.903(c)(4)(ii) (*i.e.*, certain asset-backed securities), in the aggregate, is held of record by U.S. persons; and (iii) 20 percent or more of: the principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in 230.903(c)(4)(i) (*i.e.*, certain non-participating preferred stock), and the principal amount or principal balance of its securities described in 230.903(c)(4)(ii) (*i.e.*, certain asset-backed securities), in the aggregate, is held of record by U.S. persons. 17 CFR 230.902(n).

[24] 15 U.S.C. 77j(a).

[25] Written solicitation of interest materials submitted to the Commission and otherwise in compliance with Securities Act Rule 254 [17 CFR 230.254] are not deemed to be a prospectus as defined in Section 2(10) of the Securities Act. Such materials, however, are subject to the antifraud provisions of the federal securities laws.

[26] Information ''furnished'' to the Commission under cover of Form 6–K or pursuant to Rule 12g3–2(b) is not deemed to be ''filed'' with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act. *See* Exchange Act Rules 13a–16 [17 CFR 240.13a–16] and 12g3–2(b)(4) [17 CFR 240.12g3–2(b)(4)].

the tender offer area.[27] This goal would be accomplished by amending Rule 14d–1[28] under the Exchange Act to make clear that a bidder for securities of a foreign private issuer, as well as the foreign target company, either of their representatives, and any other person who may have a filing obligation under the Williams Act,[29] would not be deemed to have triggered the filing and procedural requirements of the Williams Act by virtue of providing U.S. or foreign journalists access to offshore press conferences, offshore meetings with their representatives, and press related materials released offshore, at or in which a present or proposed tender offer of securities is discussed.

As explained more fully below, the safe harbor would be available to a U.S. or foreign bidder for the securities of a foreign private issuer target company, but not for the securities of a domestic issuer. Thus, for example, a bidder or its representatives could hold a foreign news conference to announce a tender offer for a foreign private issuer and would not, on that basis, trigger the requirements for formal commencement of the offer within five business days as required by Rule 14d–2(b),[30] and the requirement under Rule 14d–10 to extend the offer to all holders of the target company's securities.[31] Similarly, when the target company is both a reporting issuer and a foreign private issuer, the target company and its representatives would not incur an obligation to file a Tender Offer Solicitation/Recommendation Statement on Schedule 14D–9 by virtue of granting the U.S. press access to an offshore news conference where the tender offer is addressed. The safe harbor, however, would not affect the applicability of the antifraud prohibition of Section 14(e)[32] of the Exchange Act, as well as the prohibition against trading on material nonpublic information regarding a tender offer contained in Rule 14e–3[33] under the Exchange Act.

The Commission recognizes that, even in the absence of the proposed safe harbor, press coverage of the announcement of a tender offer for the securities of a foreign private issuer often results in U.S. holders of the foreign target company's securities selling their securities into the open market. To the extent that large amounts of U.S. holders were to engage in market sales, bidders may have a reduced incentive to comply with the procedural and filing requirements of the Williams Act and formally extend the offer to U.S. holders in compliance with U.S. law. Particularly in the case of foreign private issuers that have significant U.S. ownership, have securities registered under Section 12 of the Exchange Act, and are listed on a U.S. exchange or actively traded in the United States in the over-the-counter market, the proposed safe harbor could, in effect, allow persons seeking shares of these companies to ''commence'' a tender offer by engaging in press activities without implicating the procedural protections of the Williams Act and Regulation 14D (although the antifraud prohibition of Section 14(e) would continue to apply). Recognizing that journalists for publications with a general circulation in the United States often indirectly receive information from offshore press activity, would allowing direct access as permitted by the proposed safe harbor affect this market dynamic, and if so, how? The Commission requests comment whether these potential effects of the proposed rule would be appropriate in light of the purposes of the U.S. tender offer regulations.

Should other procedural requirements be imposed? Alternatively, should the safe harbor exempt all press activity (by any U.S. or foreign bidder) with regard to a foreign target company, regardless of whether the press activity is conducted in the United States or offshore, from triggering the procedural requirements of the tender offer rules? Should the Commission instead address this issue in the context of broader rulemaking on foreign tender offers?

1. Coverage of the Safe Harbor

The principal intended benefit of the safe harbor would be to prevent application of the U.S. tender offer rules where the bidder is not yet prepared to proceed with the offer or does not intend to extend the offer to U.S. holders of the target's shares. Accordingly, once an offer has commenced with the filing of documents under Regulation 14D with the Commission, the Commission currently proposes that the safe harbor would no longer be available.

The Commission also proposes limiting the availability of the safe harbor only to tender offers or proposed tender offers for the securities of foreign companies. The safe harbor would not be available for tender offers by foreign private issuers for the securities of domestic companies because there appears to be no need in that case to accommodate foreign offering practices.

In the interest of consistent application of Commission rules applicable to offshore regulatory issues, the Commission proposes using the current definition of ''foreign private issuer,'' as defined in Exchange Act Rule 3b–4,[34] for purposes of the tender offer safe harbor. Comment is solicited as to whether a different (either broader or narrower) definition should be used for the purposes of the safe harbor. For example, would the primary market for the target company's securities be a more appropriate focus? If so, how should the primary market be determined? Should the ''substantial U.S. market interest''[35] standard be used? Should the standard depend upon the percentage of the target company's securities held by U.S. holders or whether the target company is eligible for the use of Form F–3?

All bidders, whether U.S. or foreign, their representatives, and any other person who may incur a filing obligation under the Williams Act,[36] may avail themselves of the proposed safe harbor as long as the tender offer is for securities of a foreign private issuer. Where the tender offer is or will be for the securities of a foreign issuer, the Commission believes that all such

[27] Although the recent legislation directs rulemaking only with respect to the Securities Act (*see supra* n.12 and accompanying text), the Commission stated in its testimony on the Senate bill (which contained a provision regarding press activity in the tender offer area) that the tender offer question also should be addressed through rulemaking. *See* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning S. 1815, the ''Securities Investment Promotion Act of 1996,'' Before the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate (June 5, 1996). In addition, the Commission staff previously has provided guidance in the tender offer area. *See supra* n.10.

[28] 17 CFR 240.14d–1.

[29] *See* Exchange Act Rule 14d–9(d) [17 CFR 240.14d–9], specifying that, subject to certain exclusions, the filing and transmittal requirements of the rule apply to the following persons: (i) The subject company, any director, officer, employee, affiliate or subsidiary of the subject company; (ii) Any record holder or beneficial owner of any security issued by the subject company, by the bidder, or by any affiliate of either the subject company or the bidder; and (iii) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Commission pursuant to [Rule 14d–9] or Rule 14d–3 (17 CFR 240.14d–3).

[30] 17 CFR 240.14d–2(b).

[31] 17 CFR 240.14d–10.

[32] 15 U.S.C. 78n(e).

[33] 17 CFR 240.14e–3.

[34] The term ''foreign private issuer'' as defined in Rule 3b–4 [17 CFR 240.3b–4] is the same as defined under Securities Act Rule 405. *See supra* n.20 for the current definition.

[35] *See supra* n.23 for the current definition under the Securities Act of ''substantial U.S. market interest.''

[36] *See supra* n.29 for the definition of those other persons who may incur a filing obligation under the Williams Act.

parties should be able to conduct their activities in a manner consistent with local offering practices, although the proposed safe harbor does not include a requirement that the press activity be consistent with local practice. Comment is requested whether any limitations should be imposed, and if so, based upon what criteria. Should the status of the bidder (*e.g.*, foreign or domestic, Exchange Act reporting or nonreporting, eligible for Form S–3/F–3), or the status of the present or proposed tender offer (*e.g.*, intend to comply, or are complying, with the Williams Act; intend to, or will be required to, register the offer under the Securities Act) matter? Likewise, the Commission proposes that foreign companies that are the subject of the tender offer or proposed tender offer also may claim the protections of the safe harbor. Should the subject company be able to use the safe harbor, and if not, why not? If extended to either the bidder or the subject company, must the safe harbor be extended to both, and if not, why not? Should, as proposed, the other persons specified in Rule 14d–9(d) (such as officers, directors, and shareholders) be permitted to avail themselves of the safe harbor, and if not, why not?

2. Conditions

The proposed safe harbor for tender offers, like the proposed Securities Act safe harbor described above, will be subject to the conditions that access be provided to both U.S. and foreign journalists, that written materials proposed to be covered by the tender offer safe harbor include a legend similar to that proposed under the Written Materials Requirements of the Securities Act safe harbor in circumstances where there is likely to be significant interest in the tender offer by U.S. investors, and that no means to tender securities, or coupons that could be returned to indicate interest in the tender offer, be provided as part of, or attached to, any press related materials. Comment is requested as to whether some or all areas of the proposed tender offer safe harbor should function, or be interpreted, differently from the Securities Act safe harbor. Any such areas should be identified and an explanation of the difference in treatment, and the bases therefor, provided.

As proposed, where the present or proposed tender offer discussed in the written materials released under the proposed tender offer safe harbor is for equity securities registered under Section 12[37] of the Exchange Act, the Commission is proposing that such written materials released by the bidder or its representatives under the safe harbor be required to satisfy the following ''Tender Offer Written Materials Requirements'':

- The materials must include the following information:

fl A statement that the materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company;

fl A statement that no money, securities or other consideration is being solicited at this time, and, if sent in response by a U.S. resident, will not be accepted;

fl If the bidder intends to extend a tender offer in the United States at some future time for a class of equity securities of the subject company, a statement regarding this intention and that the procedural and filing requirements of the Williams Act will be satisfied at that time; and

- No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, any press related materials.

Comment is requested as to whether the addition of the Tender Offer Written Materials Requirements, in whole or in part, will be effective in deterring the use of the written materials for the purpose of conducting a tender offer in the United States without compliance with the procedural and filing requirements of the Williams Act, and if not, why not. In addition, are each of the Tender Offer Written Materials Requirements necessary and appropriate for their stated purpose? Will the Tender Offer Written Materials Requirements unnecessarily deter reliance on the safe harbor by bidders and their representatives? Are there alternative or additional procedural or substantive requirements that could or should be imposed on written materials released offshore, and if so, what kind? Should the Tender Offer Written Materials Requirements, or some variation thereof, be imposed on written materials released under the tender offer safe harbor by parties other than the bidder and its representatives, such as the subject company or any other person who may incur a filing obligation under the Williams Act?

The Commission proposes requiring the Tender Offer Written Materials Requirements only on written materials that discuss a present or proposed tender offer for equity securities registered under Section 12 of the Exchange Act, because no mandated disclosure document would be required to be filed with the Commission unless the target's equity securities are registered under Section 12. Comment is requested whether this distinction is appropriate. Should the Tender Offer Written Materials Requirements be limited to offers for Section 12 equity securities only if the bidder intends to extend the offer to U.S. holders in compliance with the procedural and filing requirements of the Williams Act?

The Commission also is considering whether any written materials covered by the safe harbor should be required to be filed with the Commission. Comment is requested whether a filing requirement should be imposed (particularly where there is a ''substantial U.S. market interest''[38] in the securities of the target company), and if so, according to what criteria, when, and with what legal effect. Should written materials only be required to be filed with the Commission when the tender offer is or will be extended to U.S. holders in compliance with the procedural and filing requirements of the Williams Act?

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed safe harbor for offshore press conferences, meetings with issuer representatives conducted offshore, or press releases or other related material released offshore, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters also may be submitted electronically to the following electronic mail address: rule-comment@sec.gov. Comments are requested on the impact of the proposals on issuers, investors, and others. Comments should specifically address any possible effects on investor protection resulting from the proposed safe harbors. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a)[39] of the Exchange Act. Comment letters should refer to File No. S7–26–96; this file number should be included in the

[37] 15 U.S.C. 78*l*.

[38] *See supra* n.23.

[39] 15 U.S.C. 78w(a).

subject line if electronic mail is used. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and empirical data relating to any costs and benefits associated with these proposals.

V. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), pursuant to the requirements of the Regulatory Flexibility Act,[40] regarding the proposed rules. The IRFA notes that the proposed rules are intended to provide companies with greater certainty in determining when journalists, both foreign and domestic, may access offshore press conferences, meetings with company representatives conducted offshore, or press releases or other related material released offshore, without violating the U.S. federal securities laws. Other than the proposed Written Materials Requirements which the Commission does not consider unduly burdensome on small businesses, the proposed rules would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed rules consistent with their objectives and the Commission's statutory authority were found.

In general, the proposed rules under the Securities Act are not limited to foreign private issuers, but instead provide a safe harbor for all issuers, irrespective of size, conducting offshore press conferences, meetings with company representatives conducted offshore, or releasing press releases or other related materials offshore. In addition, while the proposed rule under the Exchange Act is limited to tender offers for the securities of foreign private issuers only, both foreign and domestic bidders, irrespective of size, are eligible under this safe harbor, subject to the same conditions.

The term ''small business,'' as used in reference to a registrant for purposes of the Regulatory Flexibility Act, is defined by Rule 157[41] under the Securities Act as an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less and is engaged or proposing to engage in small business financing. An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities which does not exceed the $5 million dollar limitation prescribed by Section 3(b) of the Securities Act. When used with reference to an issuer other than an investment company, the term also is defined in Rule 0–10[42] of the Exchange Act as an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less. When used with respect to an investment company, the term is defined under Rule 0–10 as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

Small entities meeting these definitions would be able to rely on the proposed safe harbor on the same basis as larger entities, provided that they meet the same conditions for relying on it. The Commission is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under Rule 0–10. There is no reliable way of determining, however, how many small businesses may become subject to Commission registration and reporting obligations in the future. Further, the Commission has no data that would assist it in determining how many small businesses may actually rely on the proposed safe harbor, or may otherwise be impacted by the rule proposals. The Commission solicits comments regarding how to estimate the number of small businesses that may rely on the safe harbor or otherwise be affected by these proposals together with data or assumptions to support such an approach.

Comments are encouraged on any aspect of this analysis. A copy of the analysis may be obtained by contacting Luise M. Welby, Office of International Corporate Finance, Division of Corporation Finance, Mail Stop 3–9, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Statutory Basis for Rules

The amendments to the Securities Act rules and Regulation S are being proposed pursuant to Sections 3, 4, 5 and 19 of the Securities Act, as amended.[43] The amendment to the Exchange Act rule is being proposed pursuant to Sections 14(d), 14(e) and 23(a) of the Exchange Act.[44]

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposals

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. By adding § 230.135e to read as follows:

§ 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press related materials released offshore.

(a) For the purposes only of Section 5 of the Act [15 U.S.C. 77e], an issuer, selling security holder, or their representatives, will not be deemed to offer any security for sale by virtue of providing any journalist with access to its press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if:

(1) The present or proposed offering is not being, or to be, conducted solely in the United States;

(2) Access is provided to both U.S. and foreign journalists; and

(3) Any written press related materials pertaining to transactions in which any of the securities will be or are being offered in the United States, or where the issuer of the securities to be or being offered is not a foreign government or a foreign private issuer, as defined in § 230.405, satisfy the requirements of paragraph (b) of this section.

(b) Any written press related materials specified in paragraph (a)(3) of this section must:

(1) State that the written press related materials are not an offer of securities for sale in the United States, that securities may not be offered or sold in

[40] 5 U.S.C. 603.

[41] 17 CFR 230.157.

[42] 17 CFR 240.0–10.

[43] 15 U.S.C. 77c, 77d, 77e and 77s.

[44] 15 U.S.C. 78n(d), 78n(e), and 78w.

the United States absent registration or an exemption from registration, that any public offering of securities to be made in the United States will be made by means of a prospectus that may be obtained from the issuer or the selling security holder and that will contain detailed information about the company and management, as well as financial statements;

(2) State that no money, securities or other consideration is being solicited, and, if sent in response by a U.S. resident, will not be accepted;

(3) If the issuer or selling security holder intends to register any part of the present or proposed offering in the United States, include a statement regarding this intention; and

(4) Not include any purchase order, or coupon that could be returned indicating interest in the offering, as part of, or attached to, the written press related materials.

§ 230.502 [Amended]

3. By amending § 230.502 to remove the period at the end of paragraph (c) and add the following: ''; *Provided further,* that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.''

* * * * *

4. By removing Preliminary Note 7 and redesignating Preliminary Note 8 as Preliminary Note 7 following the undesignated heading ''Regulation S'' and before § 230.901.

5. By amending § 230.902 to add paragraph (b)(8) to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed Selling Efforts.** * *

(8) Notwithstanding paragraph (b)(1) of this section, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed ''directed selling efforts'' if the requirements of § 230.135e are satisfied.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

7. By amending § 240.14d–1 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding paragraph (c) to read as follows:

§ 240.14d–1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act [15 U.S.C. 78n(d)(1) through 78n(d)(7)], Regulation 14D promulgated thereunder (§§ 240.14d–1 through 240.14d–10), and §§ 240.14e–1 and 240.14e–2 shall not apply by virtue of the fact that a bidder for the securities of a foreign private issuer, as defined in § 240.3b–4, the subject company of such a tender offer, their representatives, or any other person specified in § 240.14d–9(d), provides any journalist with access to its press conferences held outside of the United States, to meetings with its representatives conducted outside of the United States, or to written press related materials released outside the United States, at or in which a present or proposed tender offer is discussed, if:

(1) Access is provided to both U.S. and foreign journalists; and

(2) With respect to any written press related materials released by the bidder or its representatives that discuss a present or proposed tender offer for equity securities registered under section 12 of the Act [15 U.S.C. 78*l*], the written press related materials must state that these written press related materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company, that no money, securities or other consideration is being solicited at this time, and, if sent in response by a U.S. resident, will not be accepted. If the bidder intends to extend such tender offer in the United States at some future time, a statement regarding this intention, and that the procedural and filing requirements of the Williams Act will be satisfied at that time, also must be included in these written press related materials. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, these written press related materials.

* * * * *

Dated: October 10, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–26562 Filed 10–17–96; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday
October 18, 1996

Part IV

The President

Notice of October 16, 1996—Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

Federal Register
Vol. 61, No. 203
Friday, October 18, 1996

Presidential Documents

Title 3—

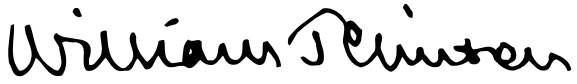
The President

Notice of October 16, 1996

Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad. The order blocks all property and interests in property of foreign persons listed in an Annex to the order, as well as foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property. Because the activities of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause unparalleled violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 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 for 1 year with respect to significant narcotics traffickers centered in Colombia.

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



THE WHITE HOUSE,
October 16, 1996.

[FR Doc. 96–27026
Filed 10–17–96; 11:15 am]
Billing code 3195–01–P

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Friday, October 18, 1996

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