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Title 3—

The President

Proclamation 6946 of October 24, 1996

United Nations Day, 1996

By the President of the United States of America

A Proclamation

Each year we dedicate a day to celebrate the United Nations because it represents America's commitment to an institution dedicated to the promotion of peace and freedom.

The United Nations was born at the end of World War II, as the international community sent representatives to San Francisco to sign the official charter. The world's sovereign countries came in search of peace, freedom, tolerance, and cooperation after a period when many worried that the world had lost these ideals forever. These ideals became—and still remain—the bedrock principles of the United Nations Charter. And although the United Nations has not yet realized all its founders' aspirations, these ideals now touch more people in more nations than ever before.

International cooperation—as exemplified by the work of the United Nations—offers the opportunity for nations to work together in addressing worldwide problems like ethnic, tribal, or interreligious disputes; famine, drought, or epidemics; natural disasters, war, or refugee crises. On United Nations Day, we recognize this unique institution's role in helping individual nations come together as a community to make life better for all people.

To be sure, as we celebrate its 51st anniversary, the U.N.'s challenges are very different from those the world faced at the close of World War II. But the challenges are real and substantial. There are, for example, still too many places in the world where failed ideologies increase the suffering of people rather than making their lives easier; where human rights and human dignity are not officially recognized; where nuclear weapons remain a threat to the world's security; where honest and impartial observers are needed to ensure free democratic elections; and where international expertise is needed to replace ecological damage with sustainable development.

Americans are justifiably proud of the role our country played in creating the United Nations as part of a network of global institutions intended to reduce the chances of war and economic depression. We continue to recognize that, in a world of increasing interdependence, the United States' engagement and leadership in the United Nations is as important now as it has ever been. We will also persist in our efforts to achieve the reforms necessary to ensure that the organization is prepared to meet the demands of a new era and that we as a Nation honor our commitments to our fellow members.

On this special day, as we honor and celebrate the work of the United Nations, let us renew our commitment and determination to work with our fellow members to maintain international peace and security, to strive for a higher quality of life, and to champion human rights for all peoples.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1996, as United Nations Day. I encourage all Americans to acquaint themselves with the activities and accomplishments of the United Nations and to observe

this day with appropriate ceremonies, programs, and activities furthering the goal of international cooperation.

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

William J. Clinton

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV96–998–3 FR]

Domestically Produced Peanuts Handled by Persons Subject to Peanut Marketing Agreement No. 146; Changes in Terms and Conditions of Indemnification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies, for 1996 and subsequent crop peanuts, the indemnification program for signatory handlers under Peanut Marketing Agreement No. 146 (Agreement). This rule reduces indemnification payment coverage to certain costs involved with appeal and product claims. The Peanut Administrative Committee (Committee), which is responsible for local administration of the quality assurance program under the Agreement, recommended the changes. This rule reduces the Committee's indemnification payments for losses incurred by signatory handlers in not being able to ship unwholesome peanuts for edible purposes from a ceiling of $7 million for each of the last two years, to about $300,000. With the reduction in indemnification claim payments, the Committee will have adequate funds in its indemnification reserve to cover costs. No handler assessments for indemnification will be necessary. This will reduce signatory handlers' costs, enabling them to be more competitive in the marketplace.

EFFECTIVE DATE: This final rule becomes effective October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2170, or Fax: (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, or Fax: (941) 299–5169. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Peanut Marketing Agreement No. 146 (7 CFR part 998). The program regulates the quality of domestically produced peanuts handled by Agreement signers. The Agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to apply to 1996 (beginning July 1, 1996) and subsequent crop year peanuts. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

About 32 signatory peanut handlers subject themselves to regulation under the Agreement. There are about 47,000 peanut producers in the 16–State production area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. Although approximately 25 percent of the signatory handlers may be classified as small entities, they are seed shellers who ship almost no peanuts to human consumption outlets. This final rule will have virtually no effect on them. A majority of the producers may be classified as small entities.

Domestic peanut production in 1995 was 1.76 million tons, with a farm value of $1 billion.

The objective of the Agreement is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About 70 percent of domestic handlers, handling approximately 95 percent of the crop, have signed the Agreement.

Under the regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and tested and those certified ''positive'' as to aflatoxin must be diverted to non-edible uses. Handlers of such peanuts currently may be eligible to receive indemnification payments for losses incurred in not being able to ship the peanuts for edible uses. Costs to administer the Agreement and make indemnification payments are paid by assessments levied on signatory handlers.

The Committee, which is composed of producers and handlers of peanuts, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one year to the next. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews Committee recommendations and justifications, as well as information from other sources, to determine whether modification of the Agreement regulations would tend to effectuate the declared policy of the Act.

The Committee believes that the domestic peanut industry is undergoing a period of great change. The Committee endorses the findings in a recent study entitled ''United States Peanut Industry Revitalization Project'' developed by the National Peanut Council and the Department's Agricultural Research Service. According to the study, since 1991, the U.S. peanut industry has been in a period of dramatic economic decline because of (1) decreasing consumption of peanuts and peanut products, (2) decreasing U.S. peanut production and increasing production costs, and (3) increasing imports of peanuts and peanut products.

The study shows that peanut per capita consumption has steadily declined; between 1991 and 1994, a total of 11 percent. Harvested acres of peanuts in the U.S. have declined 25 percent between 1991 and 1995. Production has fluctuated downward, with 1995 production 30 percent below that of 1991. Farm value of peanut production has dropped 29 percent in the same period. Farmer production costs and revenue are projected to be equal by the year 2000, as are handler costs and revenue, which would leave no profit.

The Committee agrees that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry. The Committee has been meeting for the past two years to develop major improvements and cut costs by streamlining handling procedures and making them consistent with current industry economies and technological developments.

Over the last several years, the Committee has been reducing the indemnification benefits. This reduction has made indemnification of failing peanuts a less viable economic option and has put more responsibility on each handler to decide whether it is economical to recondition a failing lot. Peanut processing machinery has improved through technological advances to the point that virtually any lot of peanuts, regardless of original (incoming) quality, can now be shelled, remilled and/or blanched (processed) to meet outgoing quality requirements established under the Agreement. The Committee concluded that handlers should bear more responsibility for reconditioning their own peanuts and in shipping quality peanuts to their customers, and that Committee and handler indemnification costs should be reduced.

The Committee met on May 23, 1996, and recommended a substantial reduction in indemnification coverage to reduce costs. Signatory handlers have indicated they would rather have the Committee eliminate the indemnification assessment currently collected from them than continue the current indemnification coverage. The Committee's indemnification payments for handler losses will decline from a record high net loss of $21.6 million for crop year 1990, and ceilings of $9 million for crop years 1991–1993 and $7 million for each of the last two years, to approximately $300,000. This will reduce signatory handlers' costs, enabling them to be more competitive in the marketplace.

The Committee has paid claims based on the initial sampling of any peanut lot failing to meet aflatoxin requirements for human consumption before the peanuts were shipped from the handler's plant to the buyer, product and appeals claims. Payments were made for blanching fees and/or remilling fees, freight charges for moving the peanuts from one production area to another for marketing, and for losses for the rejected peanuts.

Under the modified program, on an ''appeal claim'' the Committee will pay only for freight costs from the handler's plant to the manufacturer and return from manufacturer to the destination requested by the handler (handler's plant, blancher, or remiller). ''Appeal claims'' involve lots of peanuts, which had been certified as meeting all quality requirements, prior to shipment, and then rejected by the buyer on the basis of appeal aflatoxin test results. The deadline for filing ''appeal'' indemnification claims with the Committee will remain November 1 following the end of the crop year.

The Committee recommended that ''product claims'' continue to be handled as they have been in the past. That is, claims may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee will indemnify the amount of the raw peanuts in the product at $0.35 per pound. The product is destroyed under the supervision of USDA's Processed Products Branch inspectors and the Committee pays these charges. The deadline for filing ''product claims'' remains November 1 of the second year following the year in which the peanuts were produced.

An estimated $2.0 to $2.5 million indemnification reserve (after all 1995 crop claims are paid) should be available to cover claims under the revised program. With annual costs under the program estimated at $200,000 to $300,000, there is enough money in reserves to cover claims for about 10 crop years. Thus, handlers will not be required to pay indemnification assessments during that period. Indemnification assessments during the 1994 and 1995 crop years totaled approximately $3.4 million and $1.3 million, respectively.

If the Committee had recommended maintaining the current coverage at the $7,000,000 ceiling, an indemnification assessment rate of about $4.00 per ton on the 1996 crop would have been necessary to finance the program. All signatory handlers, both large and small, will benefit from the substantially lower costs associated with the elimination of annual indemnification assessment obligations. Handlers who believe they may be adversely impacted by aflatoxin can obtain private insurance coverage against such losses.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule concerning this action was published in the August 28, 1996, issue of the Federal Register (61 FR 44192). That proposal provided that interested persons could file comments, including information on the regulatory and informational impacts of the proposed rule on small businesses, through September 12, 1996. Six comments were received, four favoring and two opposing the proposed rule.

The comments in favor of implementing the changes set forth in the proposed rule were submitted on behalf of four handlers. They reiterated several of the justifications made in the proposed rule.

One commenter agreed that indemnification payments should be limited to appeal and product claims. In support of this, he stated that improvements in technology now allow normal aflatoxin problems to be handled at each handler's shelling facilities and should not be an extra cost to the industry.

Another commenter indicated that recent peanut shelling technology and peanut buyer demands have forced the peanut industry to new heights of peanut product safety and quality requirements. He also stated that the outdated and unfair system of indemnification for sheller aflatoxin claims needed to be changed. The proposed changes by the Peanut

Administrative Committee meet the needs of the peanut industry.

Two other commenters stated that it is time to limit indemnification payments for aflatoxin to appeal claims and product liability claims. They indicated there is no justification for those indemnification payments for normal aflatoxin problems that exist before blanching or remilling, since the industry has modern technology that can detect these problems and these costs should be paid solely by the individual sheller, not by the industry.

Two comments in opposition were submitted by two handlers. One commenter indicated that eliminating indemnification insurance is to ''un-do'' a system of quality control that predecessors established years ago, which has helped many small handlers survive. He agreed that peanut processing machinery and technology is available to reduce the aflatoxin content to an acceptable level on most any peanut lot, but he thinks this is an expensive procedure and that few smaller independent shellers can absorb the extra cost of reconditioning equipment necessary to accomplish this. The commenter also stated that until the industry greatly reduces or eliminates aflatoxin from occurring in peanut production, the industry should not eliminate the time proven system of handling it.

Another commenter stated that the small handler who is limited to a specific area could be severely impacted if that area happened to be dry or had other problems causing higher aflatoxin. He agreed that state of the art processing equipment is available to recondition low quality peanuts so they meet Outgoing Quality requirements.

The Department recognizes that the rule will place more responsibility on shellers for meeting the needs of peanut buyers. Information provided by the Committee indicates that the cost of the current indemnification program is simply too high and the industry must change to meet new world competition or face a serious decline. The Committee is providing an opportunity for shellers to control the quality of their own peanuts and eliminate their costs for indemnification assessments. Those handlers who believe they may be adversely impacted by aflatoxin can obtain private insurance coverage against such losses. Such insurance coverage is readily available to cover the current crop. We understand that some recent policies have been written for a cost at or less than the Committee's previous indemnification assessment rate. Although there may be some burden, not having to pay indemnification assessments is a cost saving which is expected to continue for several years due to the funds available in the indemnification reserve. Therefore, after thoroughly analyzing the comments received and other available information, the Department has concluded that this final rule is appropriate.

After consideration of relevant matter presented, including the information and recommendations submitted by the Committee, the six comments received, and other available information, it is hereby found that the final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this final rule should be implemented as close to the beginning of the crop year as possible. The crop year began July 1, 1996. Further, handlers are aware of these program changes, which were recommended at a public meeting of the Committee on May 23, 1996, and need no additional time to take advantage of the modified program. Also, at that meeting the Committee did not recommend an indemnification assessment for 1996 crop peanuts. Further, interested persons were given an opportunity to comment on the proposed rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), any information collection requirements that may be contained in this final rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067. This final rule will likely result in less reports having to be filed, particularly because there will likely be less indemnification claims filed under the reduced program coverage.

The Committee also recommended numerous relaxations to the Agreement's incoming and outgoing quality regulations for 1996 and subsequent crop peanuts, which have been proposed in a separate rulemaking action which was published in the October 4, 1996, issue of the Federal Register (61 FR 51811). Comments on that proposal must be received by October 24, 1996.

List of Subjects in 37 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 998 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

2. Section 998.300 is revised to read as follows:

§ 998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

(a) For the purpose of paying indemnities on a uniform basis pursuant to § 998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the

Outgoing quality regulation (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, ''notice'' shall be defined as the covering (executed and signed) Form PAC–5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler's sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an ''appeal'' inspection for aflatoxin. Results of the ''appeal'' inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the ''appeal'' sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the ''appeal'' sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in § 998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7 CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

(1) Cleaned inshell peanuts [1]

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock [2]

[1] Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

[2] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

(2) *Reserved.*

(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

Dated: October 18, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–27455 Filed 10–25–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 340

[INS No. 1634–93]

RIN 1115–AD45

Revocation of Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to revocation of naturalization under section 340 of the Immigration and Nationality Act (Act). This rule establishes an administrative process whereby a district director may reopen and reconsider applications for naturalization pursuant to section 340(h) of the Act. This rule will facilitate the transfer of naturalization authority contemplated by Congress from the courts to the Attorney General while retaining the protection for the individual provided under judicial naturalization.

EFFECTIVE DATE: October 24, 1996.

FOR FURTHER INFORMATION CONTACT:

Jody Marten or Thomas Cook, Naturalization and Citizenship Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–3240. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Immigration Act of 1990 (IMMACT), Public Law 101–649, dated November 29, 1990, amended section 340 of the Act, Revocation of Naturalization, to bring the reopening process of section 340(i) of the Act into conformity with the change to Administrative Naturalization. That

section, now designated 340(h), provides the Attorney General with the power to correct, reopen, alter, modify, or vacate an application granted under Administrative Naturalization. Such power had heretofore rested within the discretion of the courts, which had held exclusive jurisdiction over naturalization prior to the enactment of IMMACT.

With the change to Administrative Naturalization brought about by IMMACT, however, courts no longer hold jurisdiction over naturalization applications. It is now the responsibility of the Service to receive applications for naturalization and conduct examinations to determine statutory eligibility for citizenship. Additionally, the Service renders formal determinations on grants and denials of applications for naturalization, and provides for administrative review of applications subject to denial for cause before a final determination is made. Accordingly, Congress had amended section 340(i) of the Act to provide the Attorney General with the reopening power previously held by the courts.

In fact, the amendment to section 340(h) of the Act simply replaces the court's jurisdiction with that of the Attorney General, leaving the authority described in that statute unchanged. Taking this into account, the Service has developed a regulatory proposal that resembles the way courts conducted proceedings under the pre-amended section 340(i) of the Act. In developing the proposed rule, the Service relied upon Federal Rules of Civil Procedure 60(b) and related jurisprudence. On July 28, 1994, the Service published a proposed rule in the Federal Register at 59 FR 38381 with request for comments by September 26, 1994, to provide a procedure for the Service to reopen administrative proceedings pursuant to section 340(h) of the Act, as amended. The proposed rule was structured in a manner that would facilitate the transfer of naturalization authority contemplated by Congress while protecting the individual's rights provided under judicial naturalization.

The proposed rule redesignated § 340.11 as § 340.2 and changed the heading to distinguish the actions described therein from those described in § 340.1. In addition, it clarified the procedures and guidelines for recommending institution of revocation proceedings or criminal procedures. The proposed rule at § 340.1(e)(2) was rewritten to clarify the appeal process to the district director with the referral to the Administrative Appeals Unit.

Discussion of Comments

The Service received comments from five individuals. Three of the commenters stated they were concerned about the 1-year deadline on re-opening of applications for naturalization. One commenter stated 1 year was not sufficient time if an applicant's fraudulent means of securing naturalization became apparent more than 1 year after being naturalized. Another commenter objected to the length of time of 1 year that the Service had to reopen a naturalization application, while the Executive Office for Immigration Review (EOIR) at the same time published regulations and provided the applicant only with 30 days in which to file a motion to reconsider a final administrative decision under 8 CFR 3.2. Another commenter raised concern for the due process rights of the applicant, and two commenters stated personal service was a fundamental fairness issue. The following is a summarized discussion of those comments and the Service's response.

Section 340.1(b)(1) Procedures for Reopening of Naturalization Proceedings

The Service proposed that the district director under whose jurisdiction the original naturalization proceeding took place has jurisdiction to reopen proceedings under this section. The notice of intent to reopen naturalization proceedings and to revoke naturalization must be served no later than 1 year after the effective date of the order admitting a person to citizenship, as determined under § 337.9 of this chapter.

One commenter suggested that, in requiring service of a notice of intent to reopen naturalization and deny naturalization within 1 year of the original naturalization decision, the Service had adopted too narrow a reading of its authority under section 340(h). He stated grounds for naturalization revocation may become known after the 1-year time frame. For example, terrorists and other persons who may have committed criminal and terrorist acts which would have rendered them ineligible for naturalization may come to the Service's attention more than 1 year after naturalization. He pointed out by limiting administrative reopening to 1 year, the Service is prevented from revoking naturalization in these situations.

The Service believes the 1-year period for reopening a naturalization case and filing a notice of intent to revoke naturalization does not provide sufficient time if the applicant's fraudulent means of securing naturalization become apparent more than 1 year after being naturalized. The Service believes the 1-year rule imposes a limitation on the exercise of the Attorney General's authority that is not required by statute.

Furthermore, the Service found that extending the 1-year time limit to 2 years still has the effect of keeping the number of reopenings to actions truly corrective in nature and maintains the original intent of this regulation. The Service does not intend the reopening process to be used in cases requiring extensive investigation of possible grounds for revocation. The Service views the reopening proceedings as more of a corrective measure, as opposed to a simplified alternative to revocation proceedings under section 340(a) of the Act. If evidence of any of the above-listed grounds is obtained after 2 years from the time naturalization vested, or investigation of possible grounds for reopening extends beyond such period, the Service must forego administrative reopening and proceed with judicial revocation proceedings under section 340(a) of the Act.

The Service also changed the jurisdiction from that of the district office where the original naturalization took place to the district office having jurisdiction over the naturalized person's last known place of residence in the United States to make the jurisdiction consistent with § 340.2. The Service also changed the language from the proposed regulation from notice of intent to deny to notice of intent to revoke naturalization. Although the naturalized applicant has been served a notice of intent to reopen naturalization proceedings, he or she remains a citizen until the Service revokes naturalization.

Section 340.1(b)(2) Notice of Intent To Reopen Naturalization Proceedings and To Revoke Naturalization

The proposed rule states that if the district director determines that reopening a naturalization proceeding is warranted under § 340.1(a), he or she shall prepare a written notice of intent to reopen naturalization proceedings and to revoke naturalization. The notice shall advise the applicant of his or her right to submit a response to the notice and to request a hearing, as provided in § 340.1(b)(3). The Service is further obligated to serve the notice of intent to reopen naturalization proceedings and to revoke naturalization upon the applicant by personal service, as described in § 103.5a(a)(2).

Two commenters stated that personal service on the newly naturalized citizen was an absolute prerequisite for reopening naturalization proceedings.

One commenter said the Service should require personal service as described by § 103.5a(a)(2) because it is less restrictive than unspecified personal service under 8 CFR 246.1 for rescission. He also said that the Service should send certified letters with return receipt requested. The commenter stated this requirement should be the same as that required for service of an order to show cause, *i.e.,* to be the individual's last known address. Two of the commenters stated that, in general, the proposed regulation would place the citizen and former alien in the same position as a lawful permanent resident alien, or a person with less standing. They stated that personal service is a fundamental tenet and prerequisite to due process.

In response to the comments, the Service has added a new paragraph (b)(2)(ii) to § 340.1, to clarify that the use of certified mail is a form of ''personal service.'' It will read as follows: ''The Service shall serve the notice of intent to reopen naturalization proceedings and to revoke naturalization upon the applicant by personal service, as described in § 103.5a(a)(2) of this chapter. When personal service is accomplished by certified or registered mail, return receipt requested, but the notice is returned as undeliverable, the Service shall serve the notice again, using one of the other methods of personal service described in § 103.5a(a)(2) of this chapter.''

One of the commenters also stated the persons being naturalized should be advised that their naturalization could be revoked within 1 year of being naturalized. The Service believes there is no reason to provide additional notice regarding reopening of citizenship applications since the naturalization requirements and procedures are clearly stated in the regulations. In addition, upon applying for naturalization, the instructions for completing the Form N–400, Application for Naturalization, specify the penalties for an applicant who knowingly and willfully falsifies or conceals a material fact or submits a false document. The applicant also signs under penalty or prejury that the application and evidence submitted with it are all true and correct.

Section 340.1(b)(3) Applicant's Opportunity To Respond and To Request Hearing

In this paragraph, the applicant may submit a response to the Service's notice of intent to reopen naturalization proceedings and to revoke naturalization within sixty (60) days. The applicant may request a hearing before an immigration officer, and must submit a written request for a hearing together with any statements and/or additional documents.

One commenter considered it unfair that the Service has 1 year in which to initiate naturalization proceedings, while the applicant is required to appeal a final decision within 30 days under the proposed EOIR regulations cited at 8 CFR 3.2. The commenter stated that this promotes the convenience of the Service rather than the fundamental fairness and justice to all parties to implement the *Woodby* standard of clear, convincing, and unequivocal evidence. *See Woodby* v. *Immigration and Naturalization Service,* 385 U.S. 276 (1966). The commenter contended that there is a greater onus on the applicant to provide evidence to rebut the Service's allegations. None of the other commenters addressed the time in which an applicant must respond to the Service's notice.

The Service believes that the 2-year period established in § 340.1(b)(1), for service of a notice of intent to reopen a naturalization proceeding and to revoke naturalization is well-founded, given Fed.R.Civ.P. 60(b) and the cases decided in the courts under section 340(h) before Congress vested this authority in the Attorney General. The EOIR regulation that the commenter relies on pertains to administrative practice before the Board of Immigration Appeals, and is not relevant to the reopening of a naturalization proceeding under section 340(h).

Section 340.1(b)(4) Withdrawal of Application or Failure To Respond

The Service proposed that the applicant may submit a written statement admitting the facts which the district director alleges as grounds for reopening, and withdraw the application for naturalization. In addition, the applicant must sign the statement under oath or affirmation or certify the truth of the statement under penalty of perjury. If the applicant fails to submit a response to the notice of intent to reopen naturalization proceedings and to revoke naturalization within the period specified in § 340.1(b)(3), the applicant shall be considered to have admitted the grounds for reopening and to have withdrawn the application for naturalization.

In light of these consequences of failing to respond, two commenters felt personal service on the newly naturalized citizen was an absolute prerequisite for reopening naturalization proceedings.

One commenter said that failure to respond should constitute withdrawal only, not admission of grounds for revocation. He said preventing an alien from contesting deportability because of failure to respond unfairly penalizes the alien. Because the Service might not have to prove deportability by the *Woodby* standard, the commenter is concerned that the alien's right to due process is not properly protected. But an alien's admission of the allegations underlying a deportation charge is sufficient to meet the *Woodby* standard. *Cf. Matter of Rodriguez-Majano,* 19 I & N Dec. 811, 812 (BIA 1988). And treating a default as an admission is not unknown to the law. F. Rule Civ. P. 55. So long as the individual has notice of the allegations, and of the consequences of a failure to respond, the Service does not believe that § 340.1(b)(4)(ii) poses any due process problems.

As indicated in the discussion of § 340.1(b)(2), the Service believes it has resolved the due process issue, by not only recognizing use of certified or registered mail as a form of ''personal service,'' but by providing further that the notice must be served anew if the certified or registered mail is returned as ''undeliverable.'' In addition, in revising the last sentence of § 340.1(b)(2), the Service will serve the notice again using one of the methods of personal service described in § 103.5a(2). The Service believes it has protected the applicant's due process rights by advising him or her of the procedures for appealing the notice of intent to revoke naturalization. Therefore, the final rule maintains that failure to respond will be deemed an admission of the stated grounds for reopening and denying naturalization.

Section 340.1(g)(3) Effect of Final Decision of Denial Upon Applicant's Status

The Service proposed that, when a decision to reopen naturalization proceedings and to revoke naturalization becomes final, the district director shall order the applicant to surrender his or her certificate of naturalization. The district director shall then cancel the certificate of naturalization.

One commenter stated that, in addition to the cancellation of the certificate of naturalization, the district director should order the applicant to surrender his or her certificate of naturalization and any U.S. passport in his or her possession. Then, the Service should notify the Department of State.

The Service believes that until a decision to reopen naturalization proceedings and to revoke naturalization becomes final, through failure to appeal or through exhaustion of all administrative and/or judicial appeals, the applicant remains a citizen of the United States. When the Service makes a final decision, the naturalization is rendered void *ab initio* and the applicant must surrender his or her certificate of naturalization for cancellation. The Service agrees that when an individual's citizenship has been revoked, his or her U.S. passport should be canceled as well. Therefore, the district office having authority over the revocation will notify the Department of State, Passport Services, Washington, D.C., of the revocation of naturalization since the cancellation of a passport is within its authority.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant impact on a substantial number of small entities because of the following factors. This rule proposes a procedure for the Service to reopen naturalization applications filed by individuals. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is considered by the Office of Management and Budget to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 340

Citizenship and naturalization, Law enforcement.

Accordingly, part 340 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 340—REVOCATION OF NATURALIZATION

1. The authority citation for part 340 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

2. A new § 340.1 is added to read as follows:

§ 340.1 Reopening of a naturalization application by a district director pursuant to section 340(h) of the Act.

(a) *Reopening general.* On its own motion, the Service may reopen a naturalization proceeding and revoke naturalization in accordance with this section, if the Service obtains credible and probative evidence which:

(1) Shows that the Service granted the application by mistake; or

(2) Was not known to the Service Officer during the original naturalization proceeding; and—

(i) Would have had a material effect on the outcome of the original naturalization; and

(ii) Would have proven that:

(A) The applicant's application was based on fraud or misrepresentation or concealment of a material fact; or

(B) The applicant was not, in fact, eligible for naturalization.

(b) *Procedure for reopening of naturalization proceedings.* (1) *Jurisdiction.* The district director under whose jurisdiction the applicant currently resides has jurisdiction to reopen proceedings under this section, except that notice of intent to reopen naturalization proceedings and to revoke naturalization must be served no later than 2 years after the effective date of the order admitting a person to citizenship, as determined under § 337.9 of this chapter. This section applies to any order admitting a person to citizenship with an effective date before, on, or after October 24, 1996.

(2) *Notice of intent to reopen naturalization proceedings and to revoke naturalization.* (i) If the district director determines that reopening a naturalization proceeding is warranted under paragraph (a) of this section, the district director shall prepare a written notice of intent to reopen naturalization proceedings and to revoke naturalization. The notice shall describe in clear and detailed language the grounds on which the district director intends to reopen the proceeding. The notice shall include all evidence which the district director believes warrants reopening of the proceeding. The notice shall advise the applicant of his or her right to submit a response to the notice and to request a hearing, as provided in paragraph (b)(3) of this section.

(ii) The Service shall serve the notice of intent to reopen naturalization proceedings and to revoke naturalization upon the applicant by personal service, as described in § 103.5a(a)(2) of this chapter. When personal service is accomplished by certified or registered mail, return receipt requested, but the notice is returned as undeliverable, the Service shall serve the notice again, using another one of the methods of personal service described in § 103.5a(a)(2) of this chapter.

(3) *Applicant's opportunity to respond and to request hearing.* (i) Within sixty (60) days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a response to the Service. The response may include any statements and/or additional evidence the applicant wishes to present in response to the proposed grounds for reopening.

(ii) The applicant may request a hearing on the notice of intent to reopen naturalization proceedings and to revoke naturalization before an immigration officer authorized to review naturalization applications under sections 310 and 335 of the Act. The applicant must submit a written request for a hearing together with any statements and/or additional evidence within sixty (60) days of service of this notice. The Service shall schedule a requested hearing as soon as practicable.

(4) *Withdrawal of application or failure to respond.* (i) Upon receipt of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a written statement admitting the facts which the district director alleges as grounds for reopening, and withdrawing the application for naturalization. The applicant shall sign the statement under oath or affirmation or shall certify the truth of the statement under penalty of perjury.

(ii) If the applicant fails to submit a response to the notice of intent to reopen naturalization proceedings and to revoke naturalization within the period specified in paragraph (b)(3) of this section, that failure to respond will be deemed an admission of the stated grounds for reopening and revoking naturalization.

(5) *Right to counsel.* The applicant may be represented at any time during

reopening proceedings by an attorney or other representative qualified under part 292 of this chapter.

(6) *Burden of proof.* Upon service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant bears the burden of persuading the district director that, notwithstanding the evidence described in the notice, the applicant was eligible for naturalization at the time of the order purporting to admit the applicant to citizenship.

(c) *Record of reopened proceedings.* The record shall include, but is not limited to:

(1) The applicant's application for naturalization;

(2) The Service's notice of intent to reopen naturalization proceedings and to revoke naturalization with proof of service to the applicant;

(3) All evidence forming the basis for reopening the naturalization application;

(4) The applicant's statement and/or evidence in response to the Service's notice and in support of the application; and

(5) The record of the hearing, if a hearing was held.

(d) *Decision.* (1) The district director shall render a written decision on the reopened naturalization application within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. The decision shall consist of findings of fact, conclusions of law, and a final determination on the naturalization application. Notice of decision shall be served on the applicant or his or her attorney or representative, if applicable.

(2) *Referral for revocation suit.* Rather than reopening a naturalization decision and revoking naturalization, the district director shall refer a case for revocation proceedings under § 340.2 if:

(i) The applicant's answer to the notice of intent to reopen a naturalization proceeding and to revoke naturalization and any additional evidence that the applicant submits raises a genuine factual issue about the propriety of the applicant's naturalization, so that resolution of the factual issue will depend on the credibility of witnesses testifying under oath and subject to cross-examination; or

(ii) After rendering a decision on the merits, the district director determines that the applicant had adequately rebutted the allegations made in the notice of intent to reopen naturalization proceedings and to revoke naturalization, but the district director thereafter obtains additional evidence of at least one of the grounds set forth in paragraph (a) of this section.

(e) *Appeals.* (1) The applicant may appeal an adverse decision under paragraph (d) of this section to the Office of Examinations, Administrative Appeals Unit. Any appeal shall be filed initially with the district director within thirty (30) days after service of the notice of decision. Such appeal shall be filed in accordance with § 103.1 and § 103.7 of this chapter, by filing the appeal on Form I–290B with the fee. Appeals received after the 30-day period may be subject to dismissal for failure to timely file.

(2) If, within 45 days of the filing of a notice of appeal, the district director determines that the materials filed in support of the appeal adequately rebut the grounds for reopening, the district director may reconsider the decision to reopen the naturalization application and to revoke naturalization, and affirm the original decision naturalizing the applicant. In such a case, it is not necessary for the district director to forward the case to the Administrative Appeals Unit. If, after the district director affirms an original naturalization grant under this paragraph, the Service obtains additional evidence of the grounds set forth in paragraph (a) of this section, the Service may not bring a new motion to reopen the naturalization proceeding and to revoke naturalization, but may seek to revoke the applicant's naturalization only pursuant to section 340(a) of the Act.

(f) *Judicial review.* If a decision of the Office of Examinations, Administrative Appeals Unit, is adverse to the applicant, the applicant may seek judicial review in accordance with section 310 of the Act.

(g) *Effect of final decision of denial upon applicant's status.* (1) A final decision to reopen a naturalization proceeding and to revoke naturalization shall be effective as of the date of the original order purporting to admit the applicant to citizenship. The order purporting to admit the applicant to citizenship shall then have no legal effect.

(2) A district director's decision to reopen naturalization proceedings and to revoke naturalization will be final, unless the applicant seeks administrative or judicial review within the period specified by law or regulation.

(3) When a decision to reopen naturalization proceedings and to revoke naturalization becomes final, the district director shall order the applicant to surrender his or her certificate of naturalization. The district director shall then cancel the certificate of naturalization, and shall also notify the Department of State of the revocation of naturalization.

(4) Notwithstanding the service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant shall be considered to be a citizen of the United States until a decision to reopen proceedings and deny naturalization becomes final.

(h) *Applicant's request for reopening or modification of application.* After having been granted naturalization and administered the oath of allegiance and renunciation, an applicant may move that the Service reopen his or her naturalization application for the purpose of amending the application in accordance with § 334.5 of this chapter.

§ 340.11 [Redesignated as § 340.2 and revised]

3. Section 340.11 is redesignated as § 340.2 and is revised to read as follows:

§ 340.2 Revocation proceedings pursuant to section 340(a) of the Act.

(a) *Recommendations for institution of revocation proceedings.* Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence in the United States. If the district director is satisfied that a prima facie case exists for revocation pursuant to section 340(a) of the Act, he or she shall report the facts in writing to the Regional Director, with a recommendation regarding the institution of revocation proceedings.

(b) *Recommendation for criminal prosecution.* If it appears to the district director that a case described in paragraph (a) of this section or one in which a final decision has been reached under § 340.1(g) is amenable to criminal penalties under 18 U.S.C. 1425 for unlawful procurement of citizenship or naturalization, the district director may present such facts to the appropriate United States Attorney for possible criminal prosecution.

(c) *Reports.* It shall be the responsibility of the district director to advise the Service office that originated the information upon which the revocation inquiry is based about the progress of the investigation, and report the findings of the inquiry as soon as practicable.

Dated: October 15, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–27749 Filed 10–24–96; 4:00 pm]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on July 30, 1996 (61 FR 39556), and became effective August 12, 1996. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below are the deletions from and additions to the Foreign List which was last published on July 29, 1996 (61 FR 39556) and became effective August 12, 1996. A copy of the complete Foreign List is available from the Federal Reserve banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

AMERICAN WHITE CROSS, INC.
$.01 par common
AW COMPUTER SYSTEMS, INC.
Class A, $.01 par common
BEN FRANKLIN RETAIL STORES, INC.
$.01 par common
BIOSYS, INC.
No par common
BPI PACKAGING TECHNOLOGIES, INC.
Class B, Warrants (expire 10–07–96)
CAPSTONE PHARMACY SERVICES, INC.
Warrants (expire 08–23–96)
CEL-SCI CORPORATION
Warrants (expire 02–06–97)
CLOTHESTIME, INC.
$.001 par common
DANSKIN, INC.
$.01 par common
DAVID WHITE, INC.
$3.00 par common
DIACRIN INC.
Units (expire 12–31–2000)
ERNST HOME CENTER, INC.
$.01 par common
EV ENVIRONMENTAL, INC.
$.01 par common
EXSTAR FINANCIAL CORPORATION
$.01 par common
FIRST CHARTER BANK, N.A. (CA)
$2.56 par common
FORREST OIL CORPORATION
Warrants (expire 10–01–96)
GAMETEK, INC.
$.01 par common
GANDER MOUNTAIN, INC.
$.01 par common

INDEPENDENCE BANCORP, INC. (NJ)
$1.00 par common
INTERSCIENCE COMPUTER CORPORATION
Warrants (expire 11–15–96)
LIPOSOME COMPANY, INC., THE
Depositary Shares
MAXUS ENERGY CORPORATION
$4.00 par cumulative convertible preferred
MEDMARCO, INC.
$.001 par common
NEW WORLD POWER CORPORATION
$.01 par common
PEOPLE'S BANK (CT)
8.5% Series A, no par noncumulative convertible preferred
RALLY'S HAMBURGERS, INC.
Rights (expire 09–20–96)
REPUBLIC SECURITY FINANCIAL CORP.
Series A, 7.5% par cumulative convertible preferred
SEVEN HILLS FINANCIAL CORPORATION
No par common
SYQUEST TECHNOLOGY, INC.
$.001 par common
TAPISTRON INTERNATIONAL, INC.
$.0004 par common
Warrants (expire 06–23–97)
TINSLEY LABORATORIES, INC.
No par common
U.S. DIAGNOSTIC LABS, INC.
Class B, warrants (expire 10–14–99)
U.S. HOMECARE CORPORATION
$.01 par common
ULTRADATA SYSTEMS, INC.
Class A, warrants (expire 02–01–98)
URETHANE TECHNOLOGIES, INC.
$.01 par common
VETERINARY CENTERS OF AMERICA INC.
Warrants (expire 10–10–96)
WATERMARC FOOD MANAGEMENT COMPANY
$.05 par common
WEITZER HOMEBUILDERS, INC.
Class A, $.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

AES CORPORATION, THE
$.01 par common
AGRIUM INC.
No par common
ALEXANDER ENERGY CORPORATION
$.03 par common
ALLEGIANCE BANC CORPORATION
$1.00 par common
AMBAR, INC.
$.01 par common
AMERICA ONLINE INC.
$.01 par common
AMSERV HEALTHCARE INC.
$.01 par common
APPLIED BIOSCIENCE INTERNATIONAL, INC.
$.01 par common
ATRIA SOFTWARE, INC.
$.01 par common
BAILEY CORPORATION
$.10 par common
BAYBANKS, INC. (MA)
$2.00 par common
BAYPORT RESTAURANT GROUP, INC.
$.001 par common
BRENCO, INC.
$1.00 par common
BROOKTREE CORPORATION
No par common
BUGABOO CREEK STEAK HOUSE
$.01 par common
BUILDERS WAREHOUSE ASSOCIATION
$.008 par common
BW/IP, INC.
Class A, $.01 par common
CANYON RESOURCES CORPORATION
$.01 par common
CCB FINANCIAL CORPORATION
$5.00 par common
CELLULAR COMMUNICATIONS INTERNATIONAL, INC.
$.01 par common
CFB BANCORP (FL)
$2.00 par common
CFI INDUSTRIES, INC.
$1.00 par common
CHARTER BANCSHARES, INC.
$1.00 par common
CHARTWELL RE CORPORATION
$.01 par common
CHROMCRAFT REVINGTON, INC.
$.01 par common
CIRCLE FINANCIAL CORPORATION
$1.00 par common
CITICASTERS INC.
Class A, no par common
CITIZENS SECURITY GROUP, INC.
$.01 par common
CLINTON GAS SYSTEMS INC.
No par common
COMMERCE BANCORP, INC. (NJ)
$1.5625 par common
COMPUTER IDENTICS CORPORATION
$.10 par common
CTL CREDIT, INC.
$.01 par common
DAIRY MART CONVENIENCE STORES
Class A, $.01 par common
Class B, $.01 par common
DAVIDSON & ASSOCIATES, INC.
$10.00 par common
DNA PLANT TECHNOLOGY CORPORATION
$.01 par common
$.01 par convertible exchangeable
DOUGLAS & LOMASON COMPANY
$2.00 par common
EATON VANCE CORPORATION
Non-voting, $.125 par common
EQUITY INNS, INC.
$.01 par common
FAHNESTOCK VINER HOLDINGS
Class A, no par common
FAIRFAX BANK & TRUST COMP
$1.25 par common
FINANCIAL SECURITY CORPOR
$.01 par common
FINANCING FOR SCIENCE INTERNATIONAL INC.
$.01 par common
Warrants (expire 05–19–99)
FIREFOX COMMUNICATIONS, INC.
$.001 par common
FIRST WASHINGTON REALTY TRUST, INC.
$.01 par common
Series A, cumulative convertible preferred
FLUOROSCAN IMAGING SYSTEM
$.0001 par common
Redeemable Warrants (expire 07–11–99)
GERIATRIC & MEDICAL COMPANIES, INC.
$.10 par common
GOLF ENTERPRISES, INC.
$.01 par common
GUEST SUPPLY, INC.
No par common
HOMETOWN BANCORPORATION INC.
$1.00 par common
HOMETOWN BUFFET, INC.
$.01 par common
IMAGE INDUSTRIES, INC.
$.01 par common
INNKEEPERS USA TRUST
$.01 par common
INTERIM SERVICES INC.
$.01 par common
INTERNATIONAL JENSEN INC.
$.01 par common
INTERPOINT CORPORATION
No par common
JLG INDUSTRIES, INC.
$.20 par common
KAHLER REALTY CORPORATION
$.10 par common
KFX INC.
$.001 par common
LANDMARK GRAPHICS CORPORATION
$.05 par common
LEADER FINANCIAL CORPORATION
$1.00 par common
LOEWEN GROUP INC., THE
No par common
LOMAK PETROLEUM, INC.
$.01 par common
MAIC HOLDINGS, INC.
$1.00 par common
MARK TWAIN BANCSHARES, INC.
$1.25 par common
MDT CORPORATION
$1.25 par common
MERCURY GENERAL CORPORATION
No par common
MICROTEK MEDICAL, INC.
$.01 par common
MIDLANTIC CORPORATION
$3.00 par common
MISSISSIPPI CHEMICAL CORP.
$.01 par common
MOUNTASIA ENTERTAINMENT INC.

No par common
MSB BANCORP, INC. (NY)
$.01 par common
N.S. BANCORP, INC. (IL)
$.01 par common
NETSTAR, INC.
$.01 par common
NETWORK EXPRESS, INC.
No par common
NHS FINANCIAL, INC.
No par common
NMR OF AMERICA, INC.
$.01 par common
NYCOR, INC.
$1.00 par common
Class A, $1.00 par common
ORBIT SEMICONDUCTOR, INC.
$.001 par common
PACIFIC BASIN BULK SHIPPING
$.7327 par common
Warrants (expire 09–30–99)
PARKWAY PROPERTIES, INC.
$1.00 par common
PATLEX CORPORATION
$.10 par common
PCI SERVICES, INC.
$.001 par common
PEDIATRIX MEDICAL GROUP, INC.
$.01 par common
PERPETUAL STATE BANK (NC)
$5.00 par common
PET PRACTICE, INC., THE
$.01 par common
PREMIER FINANCIAL BANCORP, INC.
No par common
PROFESSIONAL SPORTS CARE MANAGEMENT INC.
$.01 par common
QUAKER CHEMICAL CORPORATION
$1.00 par common
REGIONAL ACCEPTANCE CORP.
No par common
RENAISSANCERE HOLDINGS, LTD.
$1.00 par common
RFS HOTEL INVESTORS, INC.
$.01 par common
ROTO-ROOTER, INC.
$1.00 par common
SCIENTIFIC GAMES HOLDING CORP.
$.001 par common
SECURITY CAPITAL BANCORP (NC)
No par common
SHAW GROUP, INC., THE
$.01 par common
SIERRA ON-LINE, INC.
$.01 par common
STATION CASINOS, INC.
$.01 par common
7% convertible preferred
SUNSTONE HOTEL INVESTORS, INC.
$.01 par common
SYBRON CHEMICALS INC.
$.01 par common
SYRATECH CORPORATION
$.01 par common
SYSTEMED, INC.
$.001 par common
THIRD FINANCIAL CORPORATION
$.01 par common
TUCKER DRILLING COMPANY, INC.
$.01 par common
U.S. HEALTHCARE, INC.
$.005 par common
UNIROYAL CHEMICAL CORPORATION
$.01 par common
UNITED COMPANIES FINANCIAL
$2.00 par common
$2.00 par convertible preferred
UUNET TECHNOLOGIES, INC.
$.001 par common
VARITRONIC SYSTEMS, INC.
$.01 par common
WESTCOTT COMMUNICATIONS, INC.
$.01 par common
WFS BANCORP, INC. (KS)
$.01 par common

Additions to the List of Marginable OTC Stocks

ABACUS DIRECT CORPORATION
$.001 par common
ABT GLOBAL PHARMACEUTICAL CORPORATION
No par common
ACCUMED INTERNATIONAL, INC.
No par common
Warrants (expire 10–14–97)
ACE*COMM CORPORATION
$.01 par common
ACRODYNE COMMUNICATIONS, INC.
$.01 par common
ADVANCE PARADIGM, INC.
$.01 par common
ADVANCED DEPOSITION TECHNOLOGIES, INC.
$.01 par common
ADVANCED DIGITAL INFORMATION CORPORATION
No par common
ADVANCED FIBRE COMMUNICATIONS
$.01 par common
ADVANCED HEALTH CORPORATION
$.01 par common
AFSALA BANCORP, INC. (New York)
$.01 par common
ALGOS PHARMACEUTICAL CORPORATION
$.01 par common
AMB FINANCIAL CORPORATION
$.01 par common
AMERICAN BANKERS INSURANCE GROUP
Series B, $1.00 par preferred
AMERICAN DISPOSAL SERVICES, INC.
$.01 par common
AMERICAN HEALTHCHOICE, INC.
$.001 par preferred
ANACOMP, INC.
$.01 par common
Warrants (expire 06–03–2001)
ANCHOR FINANCIAL CORPORATION
$6.00 par common
ANIKA RESEARCH, INC
$.01 par common
APPLIED ANALYTICAL INDUSTRIES, INC.
$.001 par common
ARQULE, INC.
$.01 par common
ASIA PACIFIC RESOURCES, LTD.
No par common
ATRIA COMMUNITIES, INC.
$.10 par common
AULT INCORPORATED
No par common
AWARE, INC.
$.01 par common
BANK OF LOS ANGELES
No par common
Warrants (expire 12–01–98)
BANK UNITED CORPORATION
$.01 par common
BARBERS HAIRSTYLING FOR MEN & WOMEN, INC., THE
$.01 par common
BEVERLY BANCORPORATION, INC.
$.01 par common
BIG ENTERTAINMENT, INC.
$.01 par common
BILLING INFORMATION CONCEPTS CORPORATION
$.01 par common
BLYVOORUITZICHT GOLD MINING COMPANY LIMITED
American Depositary Receipts
BRE-X MINERALS, LIMITED
No par common
BUFFELSFONTEIN GOLD MINES, LTD.
American Depositary Receipts
BUSINESS & PROFESSIONAL BANK (California)
No par common
C. R. ANTHONY COMPANY
$.01 par common
CADUS PHARMACEUTICAL CORPORATION
$.01 par common
CALIFORNIA INDEPENDENT BANCORP.
No par common
CAMBRIDGE HEART, INC.
$.001 par common
CARRIAGE SERVICES, INC.
Class A, $.01 par common
CCC INFORMATION SERVICES GROUP, INC.
$.10 par common
CELLEGY PHARMACEUTICALS, INC.
No par common
CELLNET DATA SYSTEMS, INC.
$.001 par common
CHEROKEE INC.
$.02 par common
CHESTER BANCORP, INC.
$.01 par common
CHROMATICS COLOR SCIENCES
$.001 par common
CLAREMONT TECHNOLOGY GROUP, INC.
No par common
CN BIOSCIENCES, INC.
$.01 par common
COFFEE PEOPLE, INC.
No par common
COINMACH LAUNDRY CORPORATION

$.01 par common
COLOSSAL RESOURCES CORPORATION
No par common
COMPANY DOCTOR, THE
$.01 par common
CONNECT, INC.
$.001 par common
CONTROL DEVICES, INC.
$.01 par common
COSTILLA ENERGY, INC.
$.01 par common
COUNTY BANK OF CHESTERFIELD (Virginia)
$5.00 par common
CSI COMPUTER SPECIALISTS, INC.
Class A, $.001 par common
CUNO INCORPORATED
$.001 par common
CYMER, INC.
$.01 par common
D&E COMMUNICATIONS, INC.
$.16 par common
DAILEY PETROLEUM SERVICES CORPORATION
Class A, $.01 par common
DBT ONLINE, INC.
$.10 par common
DIACRIN, INC.
$.01 par common
Warrants (expire 12–31–2000)
DIALYSIS CORPORATION OF AMERICA
$.01 par common
DIEDRICH COFFEE
No par common
DIGEX, INCORPORATED
$.01 par common
DIGITAL SOLUTIONS, INC.
$.001 par common
DNAP HOLDING CORPORATION
$.01 par common
DOCUMENT SCIENCES CORPORATION
$.001 par common
DURA AUTOMOTIVE SYSTEMS, INC.
Class A, $.01 par common
DURBAN ROODEPOORT DEEP, LTD.
American Depositary Receipts
DYNAMEX, INC.
$.01 par common
DYNAMIC HEALTHCARE TECHNOLOGIES, INC.
$.01 par common
DYNAMOTIVE TECHNOLOGIES CORPORATION
No par common
E*TRADE GROUP, INC.
$.01 par common
EINSTEIN/NOAH BAGEL CORPORATION
$.01 par common
ELECTROSOURCE, INC.
$.10 par common
FAXSAV INCORPORATED
$.01 par common
FILM ROMAN, INC.
$.01 par common
FIRST ALLIANCE CORPORATION
Class A, no par common
FIRST ENTERPRISE FINANCIAL GROUP, INC.
$.01 par common
FIRST M & F CORPORATION
$5.00 par common
FLANDERS CORPORATION
$.001 par common
FOTOBALL USA, INC.
$.01 par common
Warrants (expire 08–12–99)
FOUNTAIN POWERBOAT INDUSTRIES, INC.
$.01 par common
FPIC INSURANCE GROUP, INC.
$.10 par common
FX ENERGY, INC.
$.001 par common
GARGOYLES, INC.
No par common
GERON CORPORATION
$.001 par common
GKN HOLDING CORPORATION
$.0001 par common
GOLDEN BEAR GOLF, INC.
Class A, $.01 par common
GRADALL INDUSTRIES, INC.
$.01 par common
GRAND PREMIER FINANCIAL, INC.
$.01 par common
GREENSTONE RESOURCES, LTD.
No par common
GROOTVLEI PROPRITARY MINES
American Depositary Receipts
HARMONY GOLD MINING CO., LTD.
American Depositary Receipts
HEALTHCOR HOLDINGS, INC.
$.01 par common
HIBBETT SPORTING GOODS, INC.
$.01 par common
HOME BANCORP OF ELGIN, INC.
$.01 par common
HOT TOPIC, INC.
No par common
HOUSE OF FABRICS, INCORPORATED
$.01 par common
HVIDE MARINE INCORPORATED
Class A, $.001 par common
INAMED CORPORATION
$.01 par common
INDUSTIR-MATEMATIK INTERNATIONAL CORPORATION
$.01 par common
INTEGRATED LIVING COMMUNITIES, INC.
$.01 par common
INTELLIGROUP, INC.
$.01 par common
INTENSIVA HEALTHCARE CORPORATION
$.001 par common
INTERLINK COMPUTER SCIENCES, INC.
$.001 par common
INTERNATIONAL NETWORK SERVICES
No par common
INTERWEST HOME MEDICAL, INC.
No par common
INVISION TECHNOLOGIES, INC.
$.001 par common
J. W. CHARLES FINANCIAL SERVICES, INC.
$.001 par common
JACOR COMMUNICATIONS, INC.
Warrants (expire 09–18–2001)
KAPSON SENIOR QUARTERS CORPORATION
$.01 par common
KARRINGTON HEALTH, INC.
No par common
KITTY HAWK, INC.
$.01 par common
KUSHNER-LOCKE COMPANY, THE
Series C warrants, (expire 07–25–2001)
LAMAR ADVERTISING COMPANY
$.0001 par common
LARSON-DAVIS INCORPORATED
$.001 par common
LASER INDUSTRIES LIMITED
Ordinary shares (par NIS 0.0001)
LASON, INC.
$.01 par common
LCC INTERNATIONAL, INC.
Class A, $.01 par common
LEAP GROUP, INC., THE
$.01 par common
LIGHTBRIDGE, INC.
$.01 par common
LIGHTPATH TECHNOLOGIES, INC.
Class A, $.01 par common
LIQUIDATION WORLD, INC.
No par common
LUTHER MEDICAL PRODUCTS, INC.
No par common
MARKWEST HYDROCARBON, INC.
$.01 par common
MATRIX CAPITAL CORPRATION
$.01 par common
McM CORPORATION
$1.00 par common
MEDI-JECT CORPORATION
$.01 par common
MEDICAL ALLIANCE, INC.
$.002 par common
MEMBERWORKS, INC.
$.01 par common
MEMCO SOFTWARE LIMITED
Ordinary shares (NIS .01)
METRO NETWORKS, INC.
$.001 par common
METRO ONE TELECOMMUNICATIONS, INC.
No par common
METZLER GROUP, INC., THE
$.001 par common
MICROCAP FUND, INC., THE
$.01 par common
MICROVISION, INC.
No par common
Warrants (expire 08–27–2001)
MID-PENINSULA BANCORP (California)
No par common
MIDWEST FEDERAL FINANCIAL CORPORATION
$.01 par common

MIM CORPORATION
$.0001 par common
MODACAD, INC.
No par common
MOTORVAC TECHNOLOGIES, INC.
$.01 par common
MOUNTAIN PROVINCE MINING, INC.
No par common
NASTECH PHARMACEUTICAL COMPANY INC.
Warrants (expire 12–07–96)
NEOTHERAPEUTICS, INC.
No par common
Warrants (expire 09–26–2001)
NETVANTAGE, INC.
Class A, $.001 par common
Warrants (expire 05–03–2000)
NEW YORK BAGEL ENTERPRISES, INC.
$.01 par common
NITINOL MEDICAL TECHNOLOGIES, INC.
$.001 par common
NORTH COUNTY BANCORP (California)
No par common
NU-TECH BIO-MED, INC.
$.01 par common
OBJECT DESIGN, INC.
$.001 par common
OCWEN FINANCIAL CORPORATION
$.01 par common
ON COMMAND CORPORATION
$.01 par common
OPTIKA IMAGING SYSTEMS, INC.
No par common
ORCKIT COMMUNICATIONS LIMITED
Ordinary shares (NIS .10)
PACIFIC GATEWAY EXCHANGE, INC.
$.001 par common
PARK BANCORP, INC. (Illinois)
$.01 par common
PARTS SOURCE, INC., THE
$.001 par common
PEERLESS GROUP, INC.
$.01 par common
PEERLESS SYSTEMS CORPORATION
$.001 par common
PEGASUS COMMUNICATIONS CORPORATION
Class A, $.01 par common
PEGASYSTEMS, INC.
$.01 par common
PETROLEUM SECURITIES AUSTRALIA LIMITED
American Depositary Receipts
PINNACLE BANC GROUP, INC.
$4.69 par common
PREMIS CORPORATION
$.01 par common
PRO-DEX, INC.
No par common
PROFESSIONAL STAFF, PLC
American Depositary Receipts
Q.E.P. CO., INC.
$.001 par common
QUADRAMED CORPORATION
$.01 par common
R & G FINANCIAL CORPORATION
Class B, $.01 par common
R.H. PHILLIPS, INC.
No par common
RALLY'S HAMBURGERS, INC.
Warrants (expire 09–26–2000)
RASTER GRAPHICS, INC.
$.001 par common
RCM TECHNOLOGIES, INC.
$.05 par common
REDWOOD TRUST, INC.
9.74% Class B, $.01 par cumulative convertible preferred
RELIANCE BANCSHARES, INC.
$1.00 par common
RELIV' INTERNATIONAL, INC.
No par common
RENTAL SERVICE CORPORATION
$.01 par common
RESEARCH ENGINEERS, INC.
$.01 par common
RESOURCES MORTGAGE CAPITAL, INC.
Series C, par cumulative convertible preferred
RESPONSE USA, INC.
$.008 par common
RESTRAC, INC.
$.01 par common
RMH TELESERVICES, INC.
No par common
ROCKSHOX, INC.
$.01 par common
ROFIN-SINAR TECHNOLOGIES, INC.
$.01 par common
RT INDUSTRIES, INC.
$.001 par common
SCHMITT INDUSTRIES, INC.
No par common
SECURITY BANK HOLDING COMPANY
$5.00 par common
SEILER POLLUTION CONTROL SYSTEMS, INC.
$.0001 par common
SELECT SOFTWARE TOOLS PLC
American Depositary Receipts
SERVICE EXPERTS, INC.
$.01 par common
SHELL SEAFOOD RESTAURANTS, INC.
$.01 par common
SIGNATURE RESORTS, INC.
$.01 par common
SILICON GAMING, INC.
$.001 par common
SKYLANDS COMMUNITY BANK (New Jersey)
$2.50 par common
SMARTSERV ONLINE, INC.
$.01 par common
SOLAR-MATES, INC.
$.001 par common
Warrants (expire 09–29–2000)
SOURCE SERVICES CORPORATION
$.02 par common
SOUTH STREET FINANCIAL CORPORATION
No par common
SPECIALTY CATALOG CORPORATION
$.01 par common
SPLASH TECHNOLOGY HOLDINGS, INC.
$.001 par common
SRS LABS, INC.
$.001 par common
STAFFMARK, INC.
$.01 par common
STAT HEALTHCARE, INC.
$.01 par common
Warrants (expire 04–21–98)
STERICYCLE, INC.
$.01 par common
STERILE RECOVERIES, INC.
$.001 par common
STORM TECHNOLOGY, INC.
$.001 par common
STRAYER EDUCATION, INC.
$.01 par common
STRONGSVILE SAVINGS BANK (Ohio)
No par common
SUBURBAN OSTOMY SUPPLY CO., INC.
No par common
SUMMIT BANK CORPORATION
No par common
SUMMIT DESIGN, INC.
$.01 par common
SUPERIOR CONSULTANT HOLDINGS CORPORATION
$.01 par common
SWISSRAY INTERNATIONAL, INC.
$.01 par common
SYNTHETECH, INC.
$.001 par common
TALX CORPORATION
$.01 par common
TECHNICLONE INTERNATIONAL CORPORATION
No par common
TECHNOLOGY MODELING ASSOCIATES, INC.
No par common
TECHNOLOGY SERVICE GROUP, INC.
$.01 par common
Warrants (expire 05–09–99)
TELCO COMMUNICATIONS GROUP, INC.
No par common
TELESPECTRUM WORLDWIDE, INC.
$.01 par common
TELETECH HOLDINGS, INC.
$.01 par common
TELETEK, INC.
$.0001 par common
THORN PLC
American Depositary Receipts
TRANSACT TECHNOLOGIES, INCORPORATED
$.01 par common
TRANSKARYOTIC THERAPIES, INC.
$.01 par common
TRI-POINT MEDICAL CORPORATION
$.01 par common
TRITEAL CORPORATION
$.001 par common
TRUSTED INFORMATION SYSTEMS, INC.
$.01 par common

TV FILME, INC.
$.01 par common
U. S. OPPORTUNITY SEARCH, INC.
$.001 par common
UNIONBANCORP, INC. (Illinois)
$1.00 par common
UNITED BANCORP, INC. (Ohio)
$1.00 par common
UNIVERSAL OUTDOOR HOLDINGS, INC.
$.01 par common
USANA, INC.
No par common
VENTANA MEDICAL SYSTEMS, INC.
$.001 par common
VERSANT OBJECT TECHNOLOGY
No par common
VIATEL INC.
$.01 par common
VION PHARMACEUTICALS, INC.
$.01 par common
VISIGENIC SOFTWARE, INC.
$.001 par common
WARP 10 TECHNOLOGIES, INC.
No par common
WESTWOOD HOMESTEAD FINANCIAL CORPORATION
$.01 par common
WHITE PINE SOFTWARE, INC.
$.01 par common
WILLIS LEASE FINANCE CORPORATION
No par common
WINTON FINANCIAL CORPORATION
No par common
XAVIER CORPORATION
$.0001 par common
XIONICS DOCUMENT TECHNOLOGIES, INC.
$.01 par common
XLCONNECT SOLUTIONS, INC.
$.01 par common
XOMED SURGICAL PRODUCTS, INC.
$.01 par common

Deletions to the Foreign Margin List

AUSTRALIA

GOLD MINES OF KALGOORLIE LIMITED
Ordinary shares, par A$0.05
POSGOLD LIMITED
Ordinary shares, par A$0.10

CANADA

DIAMOND FIELDS RESOURCES INC.
No par common
HEMLO GOLD MINES INC.
No par common
SCOTT'S HOSPITALITY INC.
No par common subordinate-voting
TORONTO SUN PUBLISHING CORPORATION
No par common

FRANCE

DOCKS DE FRANCE SA
Ordinary shares, par 10 French francs
ECCO SA
Ordinary shares, par 25 French francs
POLIET SA
Ordinary shares, par 50 French francs

GERMANY

ASKO DEUTSCHE KAUFHAUS AG
Bearer shares par DM 50
KAUFHOF HOLDING AG
Bearer shares, par DM 50
KAUFHOF HOLDING AG
Non-Voting Preferred, par DM 50

ITALY

SME SOCIETA MERIDIONALE FINANZIARIA
Ordinary shares, par 1,000 lira

JAPAN

HONSHU PAPER CO., LTD.
¥ 50 par common
MITSUBISHI WAREHOUSE & TRANSPORTATION CO., LTD.
¥ 50 par common

NORWAY

SMEDVIG ASA
Common Shares, par 3 Norwegian krone
TRANSOCEAN ASA
Common Shares, par 5 Norwegian krone

SINGAPORE

AMCOL HOLDINGS LTD.
Ordinary shares, par S$0.25

SWITZERLAND

WINTERTHUR SCHWEIZER. VERSICHERUNGS GES.
Bearer shares, par 20 Swiss francs

UNITED KINGDOM

APV PLC
Ordinary shares, par 10 p
BET PLC
Ordinary shares, par value 25 p
BILTON PLC
Ordinary shares, par .125 p
DAWSON INTERNATIONAL PLC
Ordinary shares, par 25 p
FISONS PLC
Ordinary shares, par value 25 p
FORTE PLC
Ordinary shares, par value 25 p
LAING (JOHN) PLC
Ordinary shares, par 25 p
LAING (JOHN) PLC
A Ordinary Non-voting 25 p
MERCHANTS TRUST PLC, THE
Ordinary shares, par 25 p
SUN ALLIANCE GROUP PLC
Ordinary shares, par 25 p
TSB GROUP PLC
Ordinary shares, par value 25 p
WILLIAM BAIRD PLC
Ordinary shares, par 50 p

Additions to the Foreign Margin List

GERMANY

METRO AG
Bearer shares, par DM 50
METRO AG
Preferred Type 1, par DM 50

ITALY

ISTITUTO BANCARIO SAN PAOLO DITORINO
Ordinary shares, par 10,000 lira
MEDIASET SPA
Ordinary shares, par 1,000 lira

MEXICO

APASCO SA
Ordinary shares, no par common
CARSO GLOBAL TELECOM S.A. DE C.V.
No par common
CEMEX S.A. DE C.V. (CPO)
No par common
EMPRESAS LA MODERNA S.A. DE C.V.
Class Series A registered, no par common
GRUMA S.A. DE C.V.
Series 1–B fixed, no par common
GRUPO FINANCIERO BANAMMEX ACCIVAL S.A. DE C.V.
Series L, no par variable ordinary shares
GRUPO FINANCIERO BANCOMER S.A. DE C.V.
Series L registered, no par common
GRUPO FINANCIERO BANCOMER S.A. DE C.V.
Series B, no par common
GRUPO FINANCIERO INBURSA S.A. DE C.V.
Series B, no par common
GRUPO MEXICO S.A. DE C.V.
Series B, no par common
INDUSTRIAS PENOLES S.A. DE C.V.
No par common

NORWAY

SMEDVIG ASA
A shares, par 3 Norwegian krone
SMEDVIG ASA
B shares, par 3 Norwegian krone

UNITED KINGDOM

ALLIANCE TRUST PLC
Ordinary shares, par 25 p
BRITISH BIOTECH GROUP PLC
Ordinary shares, par 5 p
CALEDONIA INVESTMENT PLC
Ordinary shares, par 5 p
COMPASS GROUP PLC
Ordinary shares, par 5 p
COWIE GROUP PLC
Ordinary shares, par 5 p
DAILY MAIL & GENERAL TRUST PLC
A Ordinary Shares, non-voting par 50 p
EMAP PLC
Ordinary Shares, par 25 p
HAYS PLC
Ordinary shares, par 1 p
LAIRD GROUP PLC
Ordinary shares, par 25 p

ORANGE PLC
Ordinary shares, par 20 p
PERPETUAL PLC
Ordinary shares, par 10 p
RAILTRACK GROUP PLC
Ordinary shares, par 25 p
REFUGE GROUP PLC
Ordinary shares, par 5 p
SCOTTISH INVESTMENT TRUST PLC
Ordinary shares, par 25 p
SCOTTISH MORTGAGE & TRUST PLC
Ordinary shares, par 25 p
SECURICOR PLC
Ordinary shares, par 5 p
STAGECOACH HOLDINGS PLC
Ordinary shares, par 2.5 p
THORN PLC
Ordinary shares, par 25 p
WPP GROUP PLC
Ordinary shares, par 10 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), October 22, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–27541 Filed 10–25–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–12–AD; Amendment 39–9789; AD 96–21–13]

RIN 2120–AA64

Airworthiness Directives; LITEF GmbH Attitude Heading System (AHRS) Unit Model LCR–92, LCR–92S, and LCR–92H

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to LITEF GmbH Attitude and Heading Reference System (AHRS) Unit Model LCR–92, LCR–92S, and LCR–92H installed on but not limited to Sikorsky Aircraft Model S–76 helicopters, McDonnell Douglas Helicopter Systems Model MD–900 helicopters, Bell Helicopter Textron, Inc. Model 412 helicopters, and Pilatus Model PC–12 airplanes. This action requires either installing a placard adjacent to each primary attitude indicator which states that flight is limited to Visual Flight Rules (VFR) operations only, or modifying and inspecting the AHRS wiring cables, requiring a repetitive inspection of the cable shielding, and inserting a statement into the aircraft flight manual. This amendment is prompted by a field report and verified by laboratory tests that shows there is an unusual AHRS reaction to certain radio frequency signals. The actions specified by this AD are intended to prevent reliance on or to correct the cause of misleading roll and pitch information produced by the AHRS when encountering certain radio frequency signals.

DATES: Effective November 12, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1996.

Comments for inclusion in the Rules Docket must be received on or before December 27, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from LITEF GmbH, Postfach 774, 79007 Freiburg, Germany or Sikorsky Aircraft Corporation, 6900 Main Street, P.O. Box 9729, Stratford, CT 06497–9129. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on aircraft equipped with LITEF GmbH (LITEF) AHRS Unit Model LCR–92, LCR–92S, or LCR–92H. The LBA advises that the AHRS unit may provide misleading roll and pitch information to the attitude indicator, with no failure indication, when exposed to radio frequency levels much lower than the levels to which the AHRS unit was qualified.

LITEF has issued LITEF Alert Service Bulletin (ASB) No. VW/JH 6B751 dated June 12, 1996, which specifies that the AHRS unit should only be used under Day VFR conditions. LITEF has also issued LITEF ASB No. 141450–0000–840–002, dated June 28, 1996, that gives directions for the modification of the AHRS units. The LBA classified this service bulletin as mandatory and issued LBA LTA No. 96–212, dated July 4, 1996, in order to assure the continued airworthiness of these AHRS units in Germany. However, LITEF has also issued LITEF ASB No. 141450–0000–840–003, dated July 9, 1996 which supersedes LITEF ASB No. 141450–0000–840–002, dated June 28, 1996. Additionally, Sikorsky Aircraft, a manufacturer that has installed the affected AHRS units on certain of its helicopters, has issued Sikorsky Aircraft ASB No. 76–34–6A (287A), dated September 12, 1996, which provides directions for the modification of the AHRS units on those helicopters.

This AHRS unit is manufactured in Germany and was approved under TSO C4c for operation in the United States under the TSO provisions of 14 CFR part 21 and the applicable bilateral airworthiness agreement. Pursuant to the bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The affected AHRS units have been installed on U.S. type certificated aircraft, including but not limited to, Sikorsky Aircraft Model S–76 helicopters, McDonnell Douglas Helicopter Systems Model MD–900 helicopters, Bell Helicopter Textron, Inc. Model 412 helicopters, and Pilatus Model PC–12 airplanes. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type that were approved for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other LITEF AHRS units installed on, but not limited to, Sikorsky Aircraft Model S–76 helicopters, McDonnell Douglas Helicopter Systems Model MD–900 helicopters, Bell Helicopter Textron, Inc. Model 412 helicopters, and Pilatus Model PC–12 airplanes registered in the United States, this AD is being issued to prevent reliance on or to correct the cause of misleading roll and pitch information produced by the AHRS when encountering certain radio frequency signals. This AD requires either installing a placard adjacent to each primary attitude indicator that states that flight is limited to Day Visual Flight Rules (VFR) operations only, or if the primary attitude instrument(s) have been deactivated, that states that flight is limited to VFR operations only; or modifying and inspecting the AHRS

wiring cables, requiring a repetitive inspection of the cable shielding, and inserting a statement into the aircraft flight manual. The actions are required to be accomplished in accordance with the service bulletins described previously.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–12–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 96–21–13 LITEF GmbH: Amendment 39–9789. Docket No. 96–SW–12–AD.

Applicability: Attitude and Heading Reference System (AHRS) Model LCR–92, part number (P/N) 124210–1000, −2000, and −3000, Model LCR–92S, P/N 141852–1000, −1100, −2000, −2100, −3000, −3100, and −3200, and Model LCR–92H, P/N 141450–1000, −1100, −2000, −2100, −3000, and −3100, installed in aircraft certificated in any category.

Note 1: This AD applies to each aircraft equipped with an AHRS unit identified in the preceding applicability provision, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any aircraft from the applicability of this AD.

Compliance: Required within 60 calendar days after the effective date of this AD, unless accomplished previously.

To prevent reliance on or to correct the cause of misleading roll and pitch information produced by the AHRS unit when encountering certain radio frequency levels, accomplish the following:

(a) Perform the procedures contained in paragraph (1) or paragraph (2):

(1) Obliterate Technical Standard Order (TSO) C4c information from the TSO label on the exterior of the AHRS unit and install a placard made of material that is not easily erased, disfigured, or obscured, adjacent to each primary attitude indicator that states:

(i) ''Flight Limited to Day VFR Operations Only,'' or

(ii) If the primary attitude instrument(s) have been deactivated, ''Flight Limited to VFR Operations Only'' or

(2) Modify and inspect the AHRS unit and insert a statement into the operating limitation section of the Airplane or Rotorcraft Flight Manual as follows:

(i) Modify the AHRS wiring cable in accordance with either the Accomplishment Instructions of LITEF Alert Service Bulletin 141450–0000–840–003, dated July 9, 1996, or, for Sikorsky S–76 helicopters, in accordance with the Accomplishment Instructions of Sikorsky Aircraft Alert Service Bulletin No. 76–34–6A (287A), dated September 12, 1996.

(ii) Prior to the first flight after modifying the AHRS wiring cable and thereafter at intervals not to exceed 365 calendar days, using a calibrated bonding meter, inspect the modified AHRS wiring cable for proper shielding, proper bonding of the wiring cable shields, and proper unit grounding. The electrical shielding and grounding resistance should be less than 0.005 ohms. If the electrical resistance of the shielding bond is 0.005 ohms or greater, the cable shielding bond is unacceptable.

(iii) Insert into the operating limitation section of the FAA-approved Airplane or Rotorcraft Flight Manual the following statement:

''Switching from DG to MAG or operation of the ± switch (MAG mode only) in flight with any bank angle will induce an unannounced heading error. Activation of either switch at bank angles over approximately 5° will induce a large fixed heading error that will not self-align and will force the AHRS into memory with no heading OFF flag appearing for 5 minutes. If switching occurs at less than approximately 5° bank angle, self alignment will occur with a variable slewing rate. Verification of heading accuracy should be accomplished utilizing cross checking of other available

heading systems. If a fixed heading error and/or a heading OFF flag is present, then realignment can be performed by either the ± switch or by the MAG/DG/MAG switch at bank angles less than approximately 5°.''

This revision may be accomplished by inserting a copy of this AD into the aircraft flight manual.

(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, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The modification and inspections shall be done in accordance with the Accomplishment Instructions of LITEF SB No. 141450–0000–840–003, dated July 9, 1996, or, for Sikorsky S–76 helicopters, with the Accomplishment Instructions of Sikorsky Aircraft ASB No. 76–34–6A (287A), Revision A, dated September 12, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and CFR part 51. Copies of the LITEF ASBs may be obtained from LITEF GmbH, Postfach 774, 79007 Freiburg, Germany. Copies of the Sikorsky Aircraft ASB may be obtained from Sikorsky Aircraft Corporation, 6900 Main Street, P.O. Box 9729, Stratford, CT 06497–9129. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Fort Worth, Texas, on October 10, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–26960 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ANE–22]

Establishment of Class E Airspace; Oxford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; suspension of effectiveness.

SUMMARY: This action establishes a Class E airspace area at Oxford, ME (K81B) to provide for adequate controlled airspace for those aircraft using the new GPS RWY 33 Instrument Approach Procedure to Oxford County Regional Airport.

EFFECTIVE DATE: Effective October 9, 1996, the direct final rule amendments published at 61 FR 42785 are suspended until 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, Federal Aviation Administration, 12 New England Executive Park, Burlington MA 01803–5299; telephone: (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct rule with a request for comments in the Federal Register on August 19, 1996 (61 FR 42785). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 10. No adverse comments were received. However, this document suspends that rule until December 5, 1996, to allow additional time for the FAA to coordinate the establishment of this new Instrument Approach Procedure with other agencies. This final rule will become effective on December 5.

Issued in Burlington, MA, on October 9, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–27494 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–23]

Establishment of Class E Airspace; Dexter, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; suspension of effectiveness.

SUMMARY: This action establishes a Class E airspace area at Dexter, ME (K1B0) to provide for adequate controlled airspace for those using the new GPS RWY 34 Instrument Approach Procedure to Dexter Regional Airport.

EFFECTIVE DATE: Effective October 9, 1996, the direct final rule amendments published at 61 FR 42784 are suspended until 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the Federal Register on August 19, 1996 (61 FR 42784). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 10. No adverse comments were received. However, this document suspends that rule until December 5, 1996, to allow additional time for the FAA to coordinate the establishment of this new Instrument Approach Procedure with other agencies. This final rule will become effective on December 5.

Issued in Burlington, MA, on October 9, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–27495 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') announces that the current ranges of comparability for refrigerators, refrigerator-freezers, and freezers will remain in effect until new ranges of comparability are published for these products. The Commission also announces that manufacturers must continue to base the disclosures of estimated annual operating cost

required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by the Department of Energy (''DOE'') on January 5, 1995,[1] and by the Commission on February 17, 1995.[2]

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979[3] in response to a directive in the Energy Policy and Conservation Act of 1975.[4] The Rule covers eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, furnaces, and central air conditioners. The Rule also covers pool heaters[5] and contains requirements that pertain to fluorescent lamp ballasts,[6] certain plumbing products,[7] and certain lighting products.[8]

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type[9]) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under § 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect until new ranges of comparability are published.

The annual submissions of data for refrigerators, refrigerator-freezers, and freezers have been made and have been analyzed by the Commission. The ranges of comparability for these products have not changed by more than 15% from the current ranges for refrigerators, refrigerator-freezers, and freezers, which were published on November 13, 1995, and became effective on February 12, 1996.[10] Therefore, the current ranges will remain in effect until new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers. As of the effective date of the current ranges (February 12, 1996), the disclosures of estimated annual operating cost required at the bottom of EnergyGuides for refrigerators, refrigerator-freezers, and freezers must be based on the 1995 Representative Average Unit Costs of Energy for electricity (8.67 cents per kilowatt-hour) that was published by DOE on January 5, 1995,[11] and by the Commission on February 17, 1995.[12] Because the current ranges will remain in effect until new ranges are published, this requirement to use the 1995 DOE cost for electricity (8.67 cents per kilowatt-hour) also will remain in effect until new ranges of comparability are published for refrigerators, refrigerator-freezers, and freezers.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority

The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–27528 Filed 10–25–96; 8:45 am]

BILLING CODE 6750–01–M

[1] 60 FR 1773.

[2] 60 FR 9295.

[3] 44 FR 66466 (Nov. 19, 1979).

[4] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[5] 59 FR 49556 (Sept. 28, 1994).

[6] 54 FR 28031 (July 5, 1989).

[7] 58 FR 54955 (Oct. 25, 1993).

[8] 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

[9] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[10] 60 FR 56945.

[11] 60 FR 1773.

[12] 60 FR 9295.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is adopting a new rule, Rule 143.8, which sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties assessable for violations of the Commodity Exchange Act (Act) and Commission rules. The new rule will implement the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The Commission is also adopting amendments to Rule 143.1 to refer to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Thomas E. Joseph, Attorney/Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone Number: (202) 418–5450.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),[1] requires the head of each

[1] The FCPIAA is codified in a note at 28 U.S.C. 2461 note. The relevant amendments to the FCPIAA

agency to adjust by regulation the maximum amount of civil monetary penalties (CMPs) or, as applicable, the range of minimum and maximum CMPs, provided by law within the jurisdiction of that Federal agency by the cost-of-living adjustment defined in the FCPIAA, as amended.[2] The CMP maximums must be adjusted not later than a date 180 days after the date on which the DCIA was enacted, *i.e.*, by October 23, 1996, and at least once every four years thereafter. Since the purposes for the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission intends to monitor the effects of inflation on its CMP maximums and adjust them as needed to implement the requirements and purposes of the FCPIAA.[3]

II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

any penalty, fine or other sanction that—

(A) (i) Is for a specific monetary amount as provided by Federal law; or

(ii) Has a maximum amount provided for by Federal law; and

(B) Is assessed or enforced by an agency pursuant to Federal law; and

(C) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. 28 U.S.C. 2461 note.

The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three sections, section 6(c) of the Act, section 6b of the Act, and section 6c of the Act.[4]

Penalties may be assessed pursuant to section 6(c) of the Act, 7 U.S.C. 9, against ''any person'' found by the Commission to have:

(1) Engaged in the manipulation of the price of any commodity or futures contract;

(2) Made willfully a misleading statement or omitted a material fact in an application or report filed with the Commission; or

(3) Violated any provision of the Act or of the regulations or orders thereunder.

Penalties may be assessed pursuant to section 6b of the Act, 7 U.S.C. 13a, against any contract market which the Commission finds is not enforcing or has not enforced its rules, or any contract market, or any director, officer, agent, or employee of any contract market, that is violating or has violated any of the provisions of the Act or any of the rules or orders thereunder.

Penalties may be assessed by ''the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States'' pursuant to section 6c of the Act, 7 U.S.C. 13a–1, against ''any person found * * * to have committed any violation (of the provisions of the Act or any rule, regulation or order thereunder).''

III. Relevant Cost-of-Living Adjustment

The cost-of-living adjustment is defined by the FCPIAA, as amended by the DCIA, as the amount by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index[5] for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law. The adjusted CMP maximums are to be rounded based upon the size of the penalty and a specified formula. Further, in no case may the initial adjustment to a CMP maximum undertaken pursuant to these requirements exceed ten percent of such CMP maximum.

Congress last amended all relevant CMP maximums in the Futures Trading Practices Act of 1992, Pub. L. No. 102–546, 106 Stat. 3590 (1992).[6] Therefore, the cost-of-living adjustment for the CMP maximums that can be assessed and enforced by the Commission would be the amount by which the Consumer Price Index for all-urban consumers published by the Department of Labor for June, 1995 (*i.e.*, June of the year preceding this year) exceeds that index for June, 1992.[7] After rounding according to the applicable formula,[8] the maximum, inflation-adjusted CMP for each violation of the Act or Commission rules assessed against any person pursuant to Sections 6(c) and 6c of the Act will be $110,000 or triple the monetary gain to such person for each such violation, and $550,000 for each such violation when assessed pursuant to section 6b of the Act. For each of these CMP maximums, the inflation adjustment will not exceed the ten percent limit imposed by law upon the initial inflation adjustment. The FCPIAA provides that ''any increase under (FCPIAA) in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.'' Thus, the new CMP maximums may be applied only to violations of the Act that occur after the effective date of this rule.

IV. Related Matters

A. Effective Date

Adoption of Rule 143.8 would implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and therefore does not require notice.[9] The

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contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104–134 (1996), will also be codified at 28 U.S.C. 2461 note.

[2] Excluded from this requirement is ''any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970 or the Social Security Act.'' 28 U.S.C. 2461 note, as amended by Pub. L. No. 104–134.

Currently, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the regulations thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

[4] 7 U.S.C. 9, 13a and 13a–1.

[5] The Consumer Price Index means the Consumer Price Index for all-urban consumers (CPI-U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. Go to the Consumer Price Index Home Page at http://stats.bls.gov/cpihome.htm; first select, Most Requested Series; then select Consumer Price Index-All Urban Consumers, and finally select, US ALL ITEMS–1967=100–CUUROOOOAAO.

[6] The Futures Trading Practices Act of 1992 amended Section 6(c) of the Act ''by striking '$100,000' * * * and inserting 'the higher of $100,000 or triple the monetary gain to such person';'' amended Section 6b of the Act ''by striking '$100,000' * * * and inserting '$500,000';'' and added to Section 6c of the Act the relevant subsection allowing the Commission to seek a CMP in a civil court action and setting forth the maximum penalty that could be sought thereunder.

[7] The Consumer Price Index for all-urban consumers published by the Department of Labor for June, 1995 was 456.7, and for June, 1992 was 419.9. Therefore, the relevant cost of living adjustment factor would equal 456.7 divided by 419.9.

[8] The FCPIAA as amended by DCIA provides in relevant part for the rounding of any inflation adjustment ''to the nearest—

* * *

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; * * *

(6) multiple of $25,000 in the case of penalties greater than $200,000.''

Calculations of the Commission's inflation-adjusted CMP maximums are the following:

(456.7/419.9) x $100,000 = $108,763.99

(456.7/419.9) x $500,000 = $543,819.96

When rounded according to the statutory requirements, the inflation-adjusted CMP maximums would be $110,000 and $550,000.

[9] 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the Federal Register. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) * * * interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure

Continued

Commission also believes that opportunity for public comment is also unnecessary under 5 U.S.C. 553(b)(3)(B). The new rule does not effect any substantive change in Commission regulations, nor alter any obligation that a party has under Commission rules. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule change. The new rule alters current Commission practice by adjusting the maximum CMP, based on a formula set out in the FCPIAA, which may be sought or imposed by the Commission in an enforcement proceeding, and by setting forth a requirement that the Commission adjust relevant CMP maximums for inflation at least once every four years. These changes are undertaken pursuant to a statutory requirement that all agencies make such adjustments and is intended to prevent inflation from eroding the practical, deterrent effect of CMPs.

While the new higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders, the new rule does not require that the maximum penalty be imposed on any party. Nor does it alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, the new rule only applies to violations of the Act, Commission rules or Commission orders that occur after the effective date of this rule. Accordingly, persons who are currently not in compliance with the provisions of the Act and Commission rules will have sufficient opportunity to consider the extent to which this change affects their potential liability for such violations and to take action to alter their behavior.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The rule will potentially affect those persons who are found by the Commission or the Federal courts to have violated the Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Chairperson, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

While the Commission recognizes that certain persons fined for violating the Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum fixed CMP set forth in the rule on any party. As is currently the case, the imposition of the maximum fixed CMP will occur only where the administrative law judge, the Commission or a federal court finds that the gravity of the offense warrants such a fine.[10] Nor should the rule increase in real terms the economic burden of the fixed maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any existing requirements and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the new rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Neither this rule nor the group of rules of which it is a part has a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

In consideration of the foregoing and pursuant to authority contained in sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a–1(d), and 28 U.S.C. 2461 note as amended by Pub. L. No. 104–134, the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

1. The authority citation for Part 143 is revised to read as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a–1(d) and 13(a); 31 U.S.C. 3701–3719; 28 U.S.C. 2461 note.

2. Section 143.1 is revised to read as follows:

§ 143.1 Purpose.

This part implements the Federal Claims Collection Act, as amended by the Debt Collection Act, 31 U.S.C. 3701–3719, and interpreted by the Department of Justice and General Accounting Office in the Federal Claims Collection Standards (4 CFR parts 101–105), and the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. This part provides procedures which the Commission will use to collect claims owed the United States arising from activities under the Commission's jurisdiction, including amounts due the United States from fees, fines, civil penalties, damages, interest and other sources. This part further sets forth procedures for the Commission to determine and collect interest, penalties, and administrative costs on unpaid claims and to refer unpaid claims for litigation. This part also sets forth the maximum inflation-adjusted civil monetary penalties that may be assessed and enforced against persons for violations of the Commodity Exchange Act or regulations thereunder.

3. Section 143.8 is added to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) For each violation for which a civil monetary penalty is assessed against any person (other than a contract market) pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(2) For each violation for which a civil monetary penalty is assessed against any contract market or other person pursuant to Section 6c of the

thereon are impracticable, unnecessary or contrary to the public interest.

[10] Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to ''consider the appropriateness of [a] penalty to the gravity of the violation'' when assessing a CMP pursuant to section 6(c) of the Act, 7 U.S.C. 9. In addition, the Commission's penalty guidelines state that the Commission when assessing any CMP will consider the gravity of the offense in question. In assessing the gravity of an offense, the Commission may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act and whether the violator acted intentionally or willfully, as well as other factors. *See*, CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, Comm. Fut. L. Rep. [Current Transfer Binder] ¶ 26,265 (November 1994).

Commodity Exchange Act, 7 U.S.C. 13a-1, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation; and

(3) For each violation for which a civil monetary penalty is assessed against any contract market or any director, officer, agent, or employee of any contract market pursuant to section 6b of the Commodity Exchange Act, 7 U.S.C. 13a, not more than $550,000.

(b) The Commission will adjust for inflation the maximum penalties set forth in this section at least once every four years.

(c) Unless otherwise amended by an act of Congress, the penalties set forth in this rule or any penalty adjusted for inflation in the future pursuant to paragraph (b) of this section shall be applicable only to violations of the Commodity Exchange Act, Commission rules, or Commission orders which occur after November 27, 1996 or the date on which such future inflation adjustments become effective, as applicable.

Issued in Washington, DC, on October 21, 1996, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–27557 Filed 10–25–96; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

Food Labeling

CFR Correction

In title 21 of the Code of Federal Regulations, parts 100 to 169, revised as of April 1, 1996, page 132, in the first column, § 101.79 is corrected in paragraph (b)(3) by revising ''≤400 mcg (≤0.4 mg)'' to read ''≥400 mcg (≥0.4 mg)''.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 1 to 199, revised as of July 1, 1996, on page 463, in the first column, in § 75.310(a)(4), in the sixth line, ''June 10, 1996'' should read ''June 10, 1997''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 92

Revitalizing Base Closure Communities and Community Assistance—Community Redevelopment and Homeless Assistance

CFR Correction

In title 32 of the Code of Federal Regulations, parts 1 to 190, revised as of July 1, 1996, part 92 is added as follows:

PART 92—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.
92.1 Purpose.
92.5 Definitions.
92.10 Applicability.
92.15 Waivers and extensions of deadlines.
92.20 Overview of the process.
92.25 HUD's negotiations and consultations with the LRA.
92.30 LRA application.
92.35 HUD's review of the application.
92.40 Adverse determinations.
92.45 Disposal of buildings and property.

Authority: 10 U.S.C. 2687 note.

§ 92.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act (Pub. L. 103–421, approved October 25, 1994). It describes the roles and responsibilities of the Department of Defense (DoD), the Department of Housing and Urban Development (HUD), Local redevelopment Authorities (LRAs), and representatives of the homeless in planning and implementing the reuse of domestic military installations that are approved for closure or realignment. Specifically, this part describes the guidance DoD and HUD provide to the LRA, the planning documents the LRA develops and submits to DoD and HUD in planning the reuse of these installations, and the standards of review that HUD observes when reviewing the documents submitted by the LRA. Pub. L. 103–421 authorizes HUD to determine whether the plan for the reuse of the installation proposed by LRA balances the community development, economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities.

§ 92.5 Definitions.

As used in this part:

CERCLA. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq*).

Communities in the vicinity of the installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR part 91.

Continuum of care system. (1) Comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families that are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

Day. One calendar day including weekends and holidays.

DoD. Department of Defense.

HHS. Department of Health and Human Services.

Homeless person.

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD. Department of Housing and Urban Development.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD which is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100–526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) (both at 10 U.S.C. 2687, note), both as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160, 107 Stat. 1909).

Local redevelopment authority (LRA). Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

NEPA. National Environmental Policy Act of 1969 (42 U.S.C. 4320).

OEA. Office of Economic Adjustment, U.S. Department of Defense.

Private nonprofit organization. An organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designed an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Redevelopment plan. A conceptual land use plan prepared by the recognized LRA to guide local reuse of the former military installation.

Representative(s) of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

Substantially equivalent. Property that is functionally suitable for the approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

Substantially equivalent funding. Sufficient funding to acquire a substantially equivalent facility.

Surplus property. Any property not required for the needs and the discharge of the responsibilities of any Federal land holding agency as determined by the Secretary of Defense.

Title V. Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C. 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160).

Urban county. A county within a metropolitan area as defined at 24 CFR 570.3.

§ 92.10 Applicability.

(a) *General.* This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101–510 after October 25, 1994.

(b) *Request for inclusion under this process.* This part also applies to installations that were approved for closure/realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the Federal Register on May 30, 1995 (60 FR 28089–28091).

(1) *Installations with pending but not approved Title V applications as of October 25, 1994.* The LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994 and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) *Installations with approved Title V applications.* Where property has an approved Title V application, yet has not been assigned or otherwise disposed of by the Military Department, the LRA must insure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

(ii) Properties, on or off the installation, that are substantially equivalent to those requested;

(iii) Sufficient funding to acquire such substantially equivalent properties;

(iv) Services and activities that meet the needs identified in the application; or

(v) A combination of the properties, funding and services and activities described previously.

(c) *Revised Title V process.* All other installations approved for closure or realignment under either Pub. L. 100–526 or Pub. L. 101–510 prior to October 25, 1994 for which there has been no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994 may not be reconsidered under this part.

§ 92.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, DoD, through the Assistant Secretary of Defense (Economic Security), upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§ 92.20 through 92.45 in any particular case, subject only to statutory limitations.

§ 92.20 Overview of the process.

(a) *Responsibilities of the Military Department.* The Military Department shall make installation properties available to other DoD components and Federal agencies pursuant to 32 CFR part 91. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and will notify either the LRA, or the Chief Executive Officer of the state, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the Federal Register and a newspaper of general circulation in the communities in the vicinity of the installation.

(b) *Recognition of the LRA.* As soon as practicable after the list of installations

recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, DoD shall publish the name, address, and point of contact for the LRA in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation.

(c) *Responsibilities of the LRA.* The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. Although the process may begin at any time after this date of approval, the local reuse planning process must begin no later than the completion of Federal screening procedures which is deemed to be the date of the DoD Federal Register publication of available property described at § 92.20(a). For those installations that have begun the process described in this part prior to publication of this rule, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the Federal Register publication described in § 92.20(a), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from state and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone numbers and the point of contact for the LRA and information on the prescribed form and contents of the notice of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest.

(i) For all installations selected for closure or realignment prior to 1995 that have elected to proceed under Pub. L. 103–421 and which have begun receiving notices of interest prior to publication of this rule, the LRA shall have accepted notices of interest for not less than 30 days and not more than 180 days from the date the LRA submitted a request for inclusion under this process as described at § 92.10(b). For installations selected for closure or realignment prior to 1995 for which the LRA has not begun or has not completed the acceptance of notices of interest prior to publication of this part, the LRA shall accept notices of interest for not less than 30 days and not more than 90 days from the later of the date of publication of this part or the date of HUD's publication of 24 CFR part 586.

(ii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days.

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information submitted under this part without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the state and communities in which the installation concerned is located.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the representative of the homeless which is submitting the notice, its capacity to carry out the program and its financial plan for implementing the program; and

(F) An assessment of the time required in order to commence carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities, along with a description of the planned use.

(3) Undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in § 92.20(c)(3)(ii).

(ii) The LRA in coordination with the Military Department and HUD shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by § 92.20(c)(2); and

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, which includes the redevelopment plan and the homeless assistance submission. This application shall consider the notices of interest received from state and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 472); representatives of the homeless; commercial, industrial, and residential development interests; and, other interests. From the deadline date for receipt of notices of interest described at § 92.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to DoD and HUD. The application requirements are described at § 92.30.

(6) Make the draft application available to the public for review and comment throughout the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submittal to HUD and DoD, and a summary of these public comments shall be included in the application when it is submitted.

(d) *State, local, and public benefit screening.* The LRA should, while conducting its outreach efforts, work with the federal agencies that sponsor

public benefit transfers under the Federal Property and Administrative Services Act of 1949. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. These requests are not required to be met, but must be considered.

§ 92.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before or during the course of preparation of the LRA application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. HUD will provide the LRA with a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

§ 92.30 LRA application.

(a) *Redevelopment plan.* A copy of the redevelopment plan shall be part of the application.

(b) *Homeless assistance submission.* This component of the application shall include the following:

(1) *Information about homelessness in the communities in the vicinity of the installation.*

(i) A list of all the jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations The source for this information shall depend upon the size and nature of the jurisdiction(s) that comprise the LRA. LRAs representing:

(A) Jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table, Priority Homeless Needs Assessment Table, and narrative description thereof from that Consolidated Plan including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the jurisdiction it represents.

(C) Jurisdictions not described by paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction(s) it represents and a brief inventory of the facilities and services that assist homeless persons and families within each jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) *Proposed assistance to homeless persons and families.* (i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussion of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of building and property and a description of the manner in which the LRA application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in paragraph (b)(2)(iii) of this section; and

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, concentration of minorities and/or low income persons also shall be discussed.

(3) *Buildings and properties.* (i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements that would enable the same balance of interests made originally in the event that an environmental review conducted under § 92.45(a) subsequent to HUD approval indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Legally binding agreements must also provide for the reversion or transfer, either to the LRA or to another entity or entities of the buildings and property in the event they cease to be used for the homeless;

(ii) A description of how buildings and properties either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and

(iii) Information on the availability of general services such as transportation, police, fire, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activities.

(4) *Balance with economic and other development needs.* (i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and

(ii) An explanation of how the LRA application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) *Outreach.* The LRA shall explain how the outreach requirements described at § 92.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless with which the LRA consulted in preparing the application.

(c) *Public comments.* The LRA application shall include the materials described at § 92.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

§ 92.35 HUD's review of the application.

(a) *Timing.* HUD shall complete a review of each application no later than 60 days after its receipt by HUD.

(b) *Standards of review.* The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the redevelopment plan:

(1) *Need.* Takes into consideration the size and nature of the homeless

population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities.

(2) *Impact.* Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and

(ii) Whether the application is consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(3) *Balance.* Balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(4) *Outreach.* Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation.

(i) HUD will examine whether the outreach requirements described at § 92.20(c)(3) have been fulfilled by the LRA. HUD will carefully review the outreach process to insure that the LRA advertised the availability of installation properties to representatives of the homeless.

(ii) HUD will compare the list of homeless representatives contacted by the LRA against contacts maintained by the local HUD Field Office.

(5) *Properties.* Specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes. HUD will be mindful of the uniqueness of each installation. HUD will review this process so that it is confident that the LRA will make these buildings and properties available to representatives of the homeless in a timely fashion.

(c) *Notice of determination.* (1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to § 92.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of paragraph (b) of this section. If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in § 92.20(c)(5), and the state turns down a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at § 92.40.

(d) *Opportunity to cure.* (1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under paragraph (c)(1) of this section within which to submit to HUD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination that the redevelopment plan fails to meet the requirements of paragraph (b) of this section.

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination to both DOD and the LRA.

§ 92.40 Adverse determinations.

(a) *Solicitation of proposals.* If HUD determines that the LRA's resubmission fails to meet the requirements of § 92.35(b) or if no resubmission is received, HUD:

(1) Shall review the original application including the notices of interest submitted by representatives of the homeless;

(2) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless; and

(3) May request that each homeless representative submit a proposal for use of buildings or property at the installation to assist the homeless, including:

(i) A description of the program of such representative to assist the homeless;

(ii) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless;

(iii) Such information as HUD requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination; and

(iv) A certification from the local community that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(b) *Review of proposals.* HUD shall review the proposal in accordance with the following criteria:

(1) The degree to which the proposal submitted by the representatives meets each of the four criteria listed in paragraph (a)(3) of this section.

(2) The extent to which the proposal fills a gap in the community's continuum of care system.

(3) The extent to which the proposal balances in an appropriate manner the needs for the communities in the vicinity of the installation for economic development and other development with the needs of the homeless.

(4) How the proposal specifies the manner in which buildings and property and resources and assistance on and off the installation will be made available for the homeless.

(c) *Environmental review.* HUD, in cooperation with DoD, shall complete an environmental review under NEPA and other applicable environmental laws and authorities listed in 24 CFR 50.4 before accepting a proposal under this part.

(d) *Notice of decision.* HUD shall notify DOD and the LRA, within 90 days of its receipt of the revised application, of its acceptance of a proposal and shall identify the buildings and property to be disposed of and the entities to which they should be transferred.

§ 92.45 Disposal of buildings and property.

(a) *Public benefit transfer screening.* After the local redevelopment plan is accepted for planning purposes by the Military Department and accepted by HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR 101–47.303–2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official state and local public benefit screening before the completion of the redevelopment plan.

(b) *Environmental review.* The Military Department shall complete an environmental review of the installation in compliance with NEPA and CERCLA prior to disposal of the property. The Military Department may adopt an environmental review completed under § 92.40(c).

(c) *Disposal.* Upon receipt of a notice of approval of an application from HUD under § 92.35(c) and § 92.40(d), DOD shall, without consideration, dispose of the subject buildings and property in compliance with the approved application, either to the LRA or directly to the representative(s) of the homeless.

(d) *LRA's responsibility.* The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) *Reversions to the LRA.* If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

BILLING CODE 1505–01–D

Department of the Army

Corps of Engineers

33 CFR Part 207

St. Marys Falls Canal and Locks, Michigan; Use, Administration, and Navigation

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This final rule changes the annual opening date for the Soo Locks at the St. Marys Falls Canal, Sault Ste. Marie, Michigan, from April 1 to March 25. The locks will not open earlier than March 25, except in case of emergency and are subject to closure at any time in a national emergency involving a vessel disaster or other extraordinary circumstances as currently provided in 33 CFR 207.440(u).

EFFECTIVE DATE: November 27, 1996.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Kidby at Corps of Engineers Headquarters in Washington, D.C., by telephone at (202) 761–8835 or Mr. William Willis, Chief, Construction-Operations Division, Detroit District, by telephone at (313) 226–6794.

SUPPLEMENTARY INFORMATION:

Classification

1. The undersigned has reviewed this action and hereby certifies that it is not subject to the requirements of Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small businesses or other entities.

2. The Department of the Army has determined that this regulation will not affect the use of value of private property and, therefore, does not require a Takings Assessment under Executive Order 12630.

3. This rule has been determined not to be a major rule under Executive Order 12866. A Regulatory Impact Analysis (RIA) Statement will not be prepared since the proposed changes will not result in significant adverse economic effects identified in the Executive Order as grounds for a finding of major action.

Environmental Documentation

As noted in the Notice of Proposed Rulemaking (NPRM) discussed below, this action was the subject of the Final Environmental Impact Statement (FEIS), February 1994, which concluded that there would be no significant adverse environmental effects due to commencing the opening season of the locks on 21 March—earlier than the date now proposed.

Background

On January 2, 1996, a Notice of Proposed Rulemaking (NPRM) on the St. Marys Falls Canal and Locks, Michigan; Use, Administration and Navigation, 33 CFR 207.440(u) was published in the Federal Register (61 FR 33). A 30-day period was provided for public comments. During this period, fourteen comment letters were received from labor and business organizations associated with the shipping and steel industries as well as Port Authorities along the Great Lakes. All were in favor of the adoption of the proposed rule.

In consideration of the administrative record and the comments received in response to the NPRM, the Corps of Engineers has promulgated the final rule exactly as proposed in the NPRM.

List of Subjects in 33 CFR Part 207

Navigation (water), Water transportation, Vessels.

PART 207—[AMENDED]

1. The authority citation for part 207 is revised to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.440 is amended by revising paragraph (u) to read as follows:

§ 207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.

* * * * *

(u) The locks will be opened and closed to navigation each year as provided in paragraphs (u) (1) and (2) of this section except as may be authorized by the Division Engineer. Consideration will be given to change in these dates in an emergency involving disaster to a vessel or other extraordinary circumstances.

(1) *Opening date.* At least one lock will be placed in operation for the passage of vessels on March 25. Thereafter, additional locks will be placed in operation as traffic density demands.

(2) *Closing date.* The locks will be maintained in operation only for the passage of down bound vessels departing from a Lake Superior port before midnight (2400 hours) of January 14, and of upbound vessels passing Detour before midnight (2400 hours) of January 15. Vessel owners are requested to report in advance to the Engineer in charge at Sault Ste. Marie, the name of vessel and time of departure from a Lake Superior port on January 14 before midnight, and of vessels passing Detour on January 15 before midnight, which may necessitate the continued operation of a lock to permit passage of vessel.

* * * * *

Dated: September 23, 1996.

H. Martin Lancaster,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 96–27406 Filed 10–25–96; 8:45 am]

BILLING CODE 3710–92–M

POSTAL SERVICE

39 CFR Part 20

Amendment to International Package Consignment Service to Japan, Canada, and United Kingdom (U.K.)

AGENCY: Postal Service.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: The Postal Service is announcing prices for customs harmonization of catalog items being delivered via Global Package Link. All catalog harmonization performed by the Postal Service for the mailer will be billed to the mailer at a rate of $1.25 per

catalog item. If future catalogs add new items, the $1.25 rate will apply to these as well. The mailer has the option of performing their own harmonization, provided it is done in a format compatible with the Postal Service's Customs Pre-Advisory System (CPAS) software.

The above rule change will be incorporated into the rules for new destination countries announced for Global Package Link.

DATES: The interim regulations take effect as of 12:01 midnight on October 30, 1996. Comments must be received on or before December 15, 1996.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza SW, 370 IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Opiela, (202) 314–7134.

SUPPLEMENTARY INFORMATION: Global Package Link is a service that assists mail order companies and other customers that send merchandise to Japan, Canada, and the U.K. Presently, the Postal Service has Global Package Link processing facilities in New York City, Dallas, Miami, Chicago, San Francisco, and Seattle. The service includes expedited customs clearance through use of a software-based information system containing all the applicable duty and tax rates for specific products being mailed to destination countries. In order for a mailer to utilize this service, the mailers products must be ''harmonized'' with the customs classifications and the applicable duties for each destination country and put into an electronic database format for transmission to customs officials in the destination country.

The Postal Service will provide these harmonization services for the mailer at a price of $1.25 per catalog item. If catalog items are subsequently added or changed in a manner requiring re-classification, the $1.25 charge would apply to each changed item. The mailer may arrange its own catalog harmonization, provided it is done in a format compatible with the Postal Service' proprietary software, known as Custom's Pre-Advisory System (CPAS). The CPAS software is an integral part of the Global Package Link service and is used to pre-advise destination country customs officials of the contents of a Global Package Link shipment.

Accordingly, the Postal Service hereby adopts this amendment to the interim rule for Global Package Link to Japan, Canada, and the U.K. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, issue 14, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective October 30, 1996, subchapter 620 of the International Mail Manual, Issue 17, is amended as follows:

6 SPECIAL PROGRAMS

* * * * *

620 GLOBAL PACKAGE LINK

* * * * *

626.9 Catalog Harmonization Services

All catalog harmonization service performed for the Global Package Link mailer by the Postal Service will be billed to the mailer at a rate of $1.25 per catalog item. If the catalog is changed in the future, the new items will also be charged at $1.25 per item. The mailer has the option of performing their own harmonization, provided it is done in a format compatible with the Postal Service's Customs Pre-Advisory System (CPAS) software.

* * * * *

3. Effective October 30, 1996, the Individual Country Listing for Canada in the International Mail Manual, issue 17, is amended by adding the regulations concerning Global Package Link catalog harmonization service.

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Global Package Link (620)

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INSURANCE AND INDEMNITY

* * * * *

Ground Courier Service

Packages sent through Ground Courier Service include up to $100 (Canadian) insurance at no additional cost.

* * * * *

CATALOG HARMONIZATION SERVICES

All catalog harmonization service performed for the Global Package Link mailer by the Postal Service will be billed to the mailer at a rate of $1.25 per catalog item. If the catalog is changed in the future, the new items will also be charged at $1.25 per item. The mailer has the option of performing its own harmonization, provided it is done in a format compatible with the Postal Service's Customs Pre-Advisory System (CPAS) software.

4. Effective October 30, 1996, the Individual Country Listing for Great Britain and Northern Ireland in the International Mail Manual, Issue 17, is amended by adding the regulations concerning Global Package Link catalog harmonization services.

Global Package Link (620)

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CATALOG HARMONIZATION SERVICES

All catalog harmonization service performed for the Global Package Link mailer by the Postal Service will be billed to the mailer at a rate of $1.25 per catalog item. If the catalog is changed in the future, the new items will also be charged at $1.25 per item. The mailer has the option of performing its own harmonization, provided it is done in a format compatible with the Postal Service's Customs Pre-Advisory System (CPAS) software.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–27350 Filed 10–25–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–7–1–5220a; FRL–5629–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Texas; Control of Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Plants and Total Reduced Sulfur From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves the Texas plan for controlling sulfuric acid mist emissions from existing sulfuric acid production plants and for controlling total reduced sulfur (TRS) from existing kraft pulp mills. The plans were submitted to fulfill the requirements of section 111(d) of the Clean Air Act (the Act), and regulations promulgated thereunder. The plans consist of the document: *Texas Air Control Board Plan for the Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Fluoride Emissions from Existing Facilities;* and sections 112.41 to 112.47 (for control of sulfuric acid) and sections of 112.51 to 112.59 (for control of total reduced sulfur) of Texas Regulation II (31 TAC Chapter 112) *Control of Air Pollution from Sulfur Compounds.* These plans were adopted by the State of Texas on May 12, 1989, and submitted by the Governor to the EPA in a letter dated August 21, 1989.

DATES: This action is effective on December 27, 1996, unless notice is postmarked by November 27, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

Texas Natural Resource Conservation Commission, Air Quality Program, 12124 Park 35 Circle, Austin, Texas 78753

Anyone wishing to review this plan at the EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

The State of Texas submitted to the EPA on August 21, 1989, plans for controlling sulfuric acid mist from sulfuric acid plants and for controlling TRS from kraft pulp mills. The plans were developed to meet the requirements of section 111(d) of the Act.

Under section 111(d) of the Act, the EPA established procedures whereby States submit plans to control existing sources of designated pollutants. Designated pollutants are defined as pollutants which are not included on a list published under section 108(a) of the Act (i.e., National Ambient Air Quality Standard pollutants), but to which a standard of performance for new sources applies under section 111. Under section 111(d), emission standards are to be adopted by the States and submitted to the EPA for approval. The standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the New Source Performance Standards (NSPS). Such facilities are called designated facilities.

The procedures under which States submit these plans to control existing sources are defined in the Code of Federal Regulations (CFR); specifically subpart B of 40 CFR part 60. According to subpart B, the States are required to develop plans within Federal guidelines for the control of designated pollutants. The EPA publishes guidelines documents for development of State emission standards along with the promulgation of any NSPS for a designated pollutant. These guidelines apply to designated pollutants and include information such as a discussion of the pollutant's effects, description of control techniques and their effectiveness, costs and potential impacts. Also as guidance for the States, recommended emission limits and times for compliance are set forth, and control equipment which will achieve these emission limits are identified. In subpart B, two types of designated pollutants are discussed. One type of designated pollutant is the type that may cause or contribute to the endangerment of public health. The other type of designated pollutant is a welfare-related pollutant, for which adverse effects on public health have not been demonstrated. The emission guidelines for health-related pollutants (such as sulfuric acid mist) are promulgated (in 40 CFR part 60) while emission guidelines for welfare-related pollutants appear only in the applicable guideline document.

For welfare-related pollutants such as TRS, States have the option of balancing emission guidelines, times for compliance, and other information provided in a guideline document against other factors of public concern in the establishment of emission standards, compliance schedules and variances, as long as the guidelines document and public hearing information are considered and all the other requirements of subpart B are met. Therefore, States have greater flexibility in establishing plans for the control of TRS. Factors other than technology and costs can be considered in developing a TRS control plan.

II. Analysis of State Submittal

A. Texas Plan for Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Plants

Sulfuric acid mist is considered a health-related pollutant. The EPA published guidance entitled *Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units* (EPA–450/2–77–019 (NTIS: PB–274–085)), in September 1977. The final section 111(d) emission standard was promulgated October 18, 1977 (42 FR 55796), and codified in the CFR at 40 CFR subpart C, sections 60.30 to 60.34. The standard was moved to a new subpart Cb, *Emission Guidelines and Compliance Times for Sulfuric Acid Production Units,* on February 11, 1991 (56 *FR* 5525).

The emission guideline specified in 40 CFR 60, subpart Cb, for sulfuric acid production units at designated facilities, is 0.25 grams sulfuric acid mist (as measured by Method 8 of appendix A of 40 CFR part 60) per kilogram of sulfuric acid produced (0.5 pounds per ton), the production being expressed as 100 percent sulfuric acid.

The State of Texas submitted to the EPA on August 21, 1989, a section 111(d) plan for controlling sulfuric acid mist from existing sulfuric acid plants. The plan was adopted by the TACB on May 12, 1989. The plan consists of the document *Texas Air Control Board Plan for the Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Fluoride Emissions from Existing Facilities;* and sections 112.41 to 112.47, *Control of Sulfuric Acid,* of Texas Regulation II (31 TAC Chapter 112) *Control of Air Pollution from Sulfur Compounds* as revised May 12, 1989. The EPA has reviewed the plan and developed an evaluation report [1], which is based on

[1] Evaluation Report for Texas 111(d) Plan for the Control of Sulfuric Acid Mist from Existing Sulfuric Acid Production Plants.

the requirements of section 111(d) of the Act of 1977, as amended, 40 CFR part 60 subpart B and the EPA guideline document titled *Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units* (EPA–450/2–77–019 (NTIS: PB–274–085)).

The State of Texas has ten designated sulfuric acid plants. These are: Diamond-Shamrock Corporation in Sunray; Amoco Oil Company in Texas City; E. I. duPont de Nemours & Company, Inc., in La Porte; Mobil Mining and Minerals in Pasadena; Rohm and Haas, Texas Inc., in Deer Park; Stauffer Chemical Company in Baytown; Stauffer Chemical Company in Houston; Olin Corporation in Beaumont; Stauffer Chemical Company in Pasadena; and Stauffer Chemical Company in Fort Worth. The last two have been inactive since 1984 and 1982, respectively.

The emission limits in the Texas plan are the same as those required in subpart Cb. Subpart Cb requires plants to be capable of attaining the specified level of emissions within 17 months after the effective date of a State emission standard. The State plan was effective May 12, 1989, and designated sources were required to be in compliance by July 31, 1990. Therefore, compliance schedules are not required to be submitted.

B. Texas Plan for TRS Emissions From Existing Kraft Pulp Mills

The TRS consists of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, all of which are commonly emitted by kraft pulp mills. Although these TRS emissions have no demonstrated adverse effects on human health at low concentrations; they can corrode or tarnish exposed copper, zinc, and silver and discolor paints containing heavy metal slats, e.g., lead. More importantly perhaps, TRS emissions have a distinctly unpleasant odor which may adversely affect property values and economic development in the vicinity of kraft pulp mills.

On February 23, 1978 (43 FR 7566), the EPA promulgated, at 40 CFR 60 subpart BB, NSPS for eight affected facilities or emission sources in the kraft pulping industry. These sources are: recovery furnace, digester system, multiple-effect evaporator system, lime kiln, brown stock washer system, black liquor oxidation system, smelt dissolving tank, and condensate stripper system. In relevant part, the NSPS designated TRS as a welfare-related pollutant to be controlled. Subsequently, in March 1979, the EPA issued guidance entitled *Kraft Pulping, Control of TRS Emissions from Existing Mills* (EPA–450/2–78–003b (NTIS: PB–296–135)), for use by the States when developing regulations. On May 20, 1986 (51 FR 18538), the EPA amended the NSPS to allow a higher level of TRS emissions from smelt dissolving tanks. The NSPS for emissions from smelt dissolving tanks was changed from 0.0084 to 0.016 grams/kilogram black liquor solids (BLS) as hydrogen sulfide.

The State of Texas submitted to the EPA on August 21, 1989, a section 111(d) plan for controlling TRS from kraft pulp mills. The plan was adopted by the TACB on May 12, 1989. The plan consists of the document: *Texas Air Control Board Plan for the Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Fluoride Emissions from Existing Facilities* and sections 112.51 to 112.59, *Control of Total Reduced Sulfur (TRS),* of Texas Regulation II (31 TAC Chapter 112) *Control of Air Pollution from Sulfur Compounds* as revised May 12, 1989. The EPA has reviewed the plan and developed an evaluation report [2], which is based on the requirements of section 111(d) of the Clean Air Act of 1977, as amended, 40 CFR part 60 subpart B and the EPA guideline document titled *Kraft Pulping: Control of TRS Emissions from Existing Mills*.

The State of Texas has six designated kraft pulp mills. These are: Simpson Paper company in Pasadena; Champion International in Sheldon; Temple-Eastex, Inc. in Evadale; Champion International in Lufkin; International Paper Company in Domino; and Inland-Orange, Inc. in Orange.

The Texas section 111(d) Plan for TRS emissions from existing kraft pulp mills has the same emission limits as specified in the guideline document. The emission limit for smelt dissolving tanks is 0.016 grams/kilogram BLS, the same as the 1986 NSPS.

One concern was raised by the EPA during the review of the TRS regulation during the State comment period. This concern was the allowance for the State's approval of an alternate emission limitation if a facility submitted its request to the State before July 31, 1990. This provision is included in Section 112.53 of Texas Regulation II. The EPA stated that the concept of allowing for alternate emission limitation was acceptable; our concern was that the regulation did not require approval of an alternate emission limitation by the EPA.

Texas committed in their response to satisfy the administrative requirements outlined in 40 CFR part 60, regarding formal 111(d) plan revisions, and to complete, prior to submission to the EPA, a technical review regarding the application for an alternate emission limit. The State, in their evaluation of testimony, stated that the EPA would have the opportunity to comment at public hearings. Although this response did not fully address our concerns, this issue is now a moot point, since no facility submitted an application for an alternate emission limit before July 31, 1990. Therefore, this issue does not stand in the way of approval of the State's plan.

All kraft pulp mills in Texas were required to be in compliance with the recovery furnace emissions limit by July 31, 1992, and all other applicable emission limits by July 31, 1991. Therefore no compliance schedules are required.

III. Final Action

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve this plan should adverse or critical comments be filed. This action will be effective December 27, 1996 unless, by November 27, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 27, 1996.

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

[2] Evaluation Report for Texas 111(d) Plan for the Control of Total Reduced Sulfur (TRS) from Existing Kraft Pulp Mills.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Regulatory Flexibility Act

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

State plan approvals under section 111 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal State plan approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric acid plants, Sulfuric oxides.

Dated: September 30, 1996.

Jerry Clifford,

Acting Regional Administrator.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 is revised to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Part 62 is amended by adding Subpart SS to read as follows:

Subpart SS—Texas

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

Sec.

62.10850 Identification of plan.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

62.10860 Identification of sources.

Total Reduced Sulfur From Existing Kraft Pulp Mills

62.10870 Identification of sources.

Subpart SS—Texas

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.10850 Identification of Plan.

(a) *Identification of plan.* Texas Plan for Control of Designated Pollutants from Existing Facilities (111(d)Plan).

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from existing sulfuric acid production plants as adopted by the Texas Air Control Board (TACB) on May 12, 1989, and submitted by the Governor in a letter dated August 21, 1989.

(2) Control of total reduced sulfur from existing kraft pulp mills as adopted by the Texas Air Control Board (TACB) on May 12, 1989, and submitted by the Governor in a letter dated August 21, 1989.

(c) *Designated facilities.* The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric acid production plants.

(2) Kraft Pulp Mills.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

§ 62.10860 Identification of sources.

(a) *Identification of sources.* The plan includes the following sulfuric acid production plants:

(1) Diamond-Shamrock Corporation in Sunray, Texas.

(2) Amoco Oil Company in Texas City, Texas.

(3) E.I. duPont de Nemours & Company, Inc. in La Porte, Texas.

(4) Mobil Mining and Minerals in Pasadena, Texas.

(5) Rohm and Haas, Texas Inc. in Deer Park, Texas.

(6) Stauffer Chemical Company in Baytown, Texas.

(7) Stauffer Chemical Company in Houston, Texas.

(8) Olin Corporation in Beaumont, Texas.

(9) Stauffer Chemical Company in Pasadena, Texas.

(10) Stauffer Chemical Company in Fort Worth, Texas.

Total Reduced Sulfur From Existing Kraft Pulp Mills

§ 62.10870 Identification of source.

(a) Identification of sources. The plan includes the following kraft pulp mills:

(1) Simpson Paper Company in Pasadena, Texas.

(2) Champion International in Sheldon, Texas.

(3) Temple-Eastex, Inc. in Evadale, Texas.

(4) Champion International in Lufkin, Texas.

(5) International Paper Company in Domino, Texas.

(6) Inland-Orange, Inc. in Orange, Texas.

[FR Doc. 96–26557 Filed 10–25–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–3, 301–5, 301–6, 301–8, 301–10, and 301–11

[FTR Amendment 50]

RIN 3090–AF96

Federal Travel Regulation; Streamlining Reimbursement Claim Review and Elimination of Requirement for Receipts, Regardless of Amount, for Certain Travel Expense Items

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to streamline the review of travel reimbursement claims and to eliminate the requirement for a receipt, regardless of amount, for certain travel expense items. This document will ease the processing of reimbursement claims, thereby reducing agency administrative costs.

DATES: This final rule is effective October 28, 1996. This final rule applies for travel (including travel incident to a change of official station) performed on or after October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–0299.

SUPPLEMENTARY INFORMATION: This amendment was developed by the Joint Financial Management Improvement Program (JFMIP) Travel Reinvention Task Force to streamline the processing of travel reimbursement claims. The General Services Administration (GSA), after review of the JFMIP recommendations, has determined that such changes are appropriate and is implementing the changes through this amendment. The amendment allows agencies to shift responsibility for travel voucher review from the voucher examiner to the travel authorizing/approving official or his/her designee (e.g., supervisor), and eliminates the requirement to provide receipts, regardless of amount, for certain travel expense items.

Receipt Requirements Removed

On December 6, 1995, GSA published in the Federal Register (60 FR 62332) FTR Amendment 45 which raised from $25 to $75 the maximum travel expense amount which may be claimed without requirement for a supporting receipt. The FTR, however, has continued to contain a list of 18 travel expense items which require a receipt regardless of amount. These items include excess baggage; baggage transfer and checking charges; clerical assistance; fees relating to travel outside the continental United States; hire of a special conveyance; miscellaneous expenses allowable under FTR § 301–9.1(e); operating expenses of a privately owned conveyance; rental of rooms for official business; rental of typewriters; personal services, such as guides, interpreters, packers and drivers of vehicles; stenographic and typing services; freight or express shipments; steamer chairs, steamer cushions, and steamer rugs; storage of baggage or property; telegrams, cablegrams, and radiograms; long-distance telephone calls; copies of records; and cash payments for passenger transportation services. This amendment eliminates the requirement for a traveler to furnish a receipt, regardless of amount, for these items. The traveler will be required to furnish a receipt for these items only if the individual expense exceeds the $75 receipts threshold established in FTR Amendment 45. Additionally, this amendment makes a change to FTR part 301–8, inadvertently omitted in FTR Amendment 45, to increase to $75 the maximum amount that may be claimed without a supporting receipt for a meal under the actual expense method of subsistence reimbursement.

Supervisory Responsibilities Expanded

FTR § 301–11.4, in effect prior to this amendment, provided for supervisory review of travel vouchers primarily to confirm that travel for which expenses were claimed was performed as authorized. Voucher examiners historically have been responsible for ensuring that vouchers are properly prepared according to pertinent regulations and agency procedures before being certified for payment.

The JFMIP recommends placing this responsibility with the supervisor or other agency-designated official. Such individual should be closer to the employee both in proximity and in knowledge of the employee's need to perform official travel, and therefore better able to determine if the claimed expenses are reasonable and were necessary. This amendment will allow agencies to shift responsibility for thorough review of travel reimbursement claims from the voucher examiner to the travel authorizing/approving official or his/her designee (e.g., supervisor), as appropriate, so that the individual responsible for the travel budget also is responsible for ensuring that directed travel was performed as authorized and that travel dollars are spend wisely and properly.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–3, 301–5, 301–6, 301–8, 301–10, and 301–11

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR parts 301–3, 301–5, 301–6, 301–8, 301–10, and 301–11 are amended as follows:

PART 301–3—USE OF COMMERCIAL TRANSPORTATION

1. The authority citation for part 301–3 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–3.4 [Amended]

2. Section 301–3.4 is amended by adding after the phrase ''shall obtain a receipt'' where it appears in the second sentence of paragraph (b)(2)(i), the parenthetical phrase, ''(when required under § 301–11.3(c))''.

PART 301–5—BAGGAGE

3. The authority citation for part 301–5 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–5.5 [Amended]

4. Section 301–5.5 is amended by removing paragraph (c).

PART 301–6—COMMUNICATIONS SERVICES

5. The authority citation for part 301–6 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–6.6 [Amended]

6. Section 301–6.6 is amended by adding after the phrase ''and a receipted copy'' where it appears in the last sentence of paragraph (b), the parenthetical phrase, ''(when required under § 301–11.3(c))''.

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

7. The authority citation for part 301–8 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–8.5 [Amended]

8. Section 301–8.5 is amended by removing the amount ''$25'' in paragraph (a)(2), and by adding in its place, the amount ''$75''.

PART 301–10—SOURCES OF FUNDS

9. Authority citation for part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707.

§ 301.10.2 [Amended]

10. Section 301–10.2 is amended by removing and reserving paragraph (b)(3)(ii).

PART 301–11—CLAIMS FOR REIMBURSEMENT

11. The authority citation for part 301–11 is revised to read as follows:

Authority: 5 U.S.C. 5707.

12. Section 301–11.3 is amended by revising paragraph (c) to read as follows:

§ 301–11.3 Travel vouchers and attachments.

* * * * *

(c) *Receipts required.* Receipts are required for allowable cash expenditures in amounts in excess of $75. Lodging receipts are required as specified in § 301–7.9(b) and § 301–8.5(a) of this chapter. When receipts are not available, the expenditures shall be explained on the voucher.

* * * * *

13. Section 301–11.4 is amended by revising the heading of paragraph (a), by revising paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

§ 301–11.4 Submission and review of travel vouchers.

(a) *Submission procedures.* * * *

(b) *Review to confirm travel was performed as authorized.* The travel authorizing/approving official or his/her designee (e.g., supervisor) shall review the completed travel voucher to confirm that the travel for which expenses are being claimed was performed as authorized. The individual who performs the voucher review should have full knowledge of the employee's activities. Administrative approval of the voucher shall be in accordance with § 301–11.6.

(c) *Administrative voucher review responsibilities.* The travel authorizing/approving official or his/her designee (e.g., supervisor) shall ensure that the voucher is properly prepared according to pertinent regulations and agency procedures before it is certified for payment. This agency official shall review the claim to:

(1) Ascertain accuracy of the amounts claimed;

(2) Determine whether the types of expenses claimed are authorized and allowable expenses; and

(3) Ensure that required receipts, statements, justifications, etc. are attached to the voucher in support of the claimed expenses.

(d) *Finance office responsibilities*—(1) *Accounting responsibilities.* The agency office which has accounting responsibilities pertaining to the payment of travel and transportation reimbursement claims shall carry out its responsibilities in accordance with procedures prescribed by the General Accounting Office (GAO) in the GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures.[1] Additionally, agencies shall establish procedures for collecting unused passenger tickets and transportation refund applications and for initiating the refund process in accordance with 41 CFR 101–41.209 and 101–41.210 (see § 301–3.5).

(2) *Certifying officer responsibilities.* The certifying officer assumes ultimate responsibility under 31 U.S.C. 3528 for the validity of the voucher, irrespective of review of the voucher under paragraph (b) or (c) of this section.

[1] The GAO Policy and Procedures Manual for Guidance of Federal Agencies is available from the Distribution Section, Room 1100, U.S. General Accounting Office, 710 4th Street, NW (corner of 4th and G Streets), Washington, DC 20548.

§ 301–11.5 [Amended]

14. Section 301–11.5 is amended by adding after the phrase ''furnishing pertinent receipts'' where it appears in the first sentence of paragraph (c)(3), the parenthetical phrase, ''(when required under § 301–11.3(c))''.

Dated: October 21, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–27398 Filed 10–25–96; 8:45 am]

BILLING CODE 6820–34–M

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41 CFR Part 302–6

[FTR Amendment 51]

RIN 3090–AG15

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. Section 5724a(a)(4)(B)(iii) of title 5, United States Code, requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the preceding year over that published for December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1996, and applies to employees whose effective date of transfer is on or after October 1, 1996. For purposes of this regulation, the effective date of transfer is on the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: This final rule makes the annual adjustment to the maximum reimbursement limitations for the sale and purchase of an employee's residence when the employee transfers in the interest of the

Government. The total amount of expenses that may be reimbursed in connection with the sale of a residence shall not exceed 10 percent of the actual sale price or $23,070, whichever is the lesser amount. The total amount of expenses that may be reimbursed in connection with the purchase of a residence shall not exceed 5 percent of the purchase price or $11,534, whichever is the lesser amount. The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the Federal Register for notice or comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 302–6

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–6 is amended as follows:

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 302–6.2 [Amended]

2. Section 302–6.2 is amended by removing the amount ''$22,398'' in paragraph (g)(1) and adding in its place the amount ''$23,070''; and by removing the amount ''$11,198'' in paragraph (g)(2) and adding in its place the amount ''$11,534''.

Dated: October 11, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–27583 Filed 10–25–96; 8:45 am]

BILLING CODE 6820–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101

[FCC 96–396]

Implementation of Section 403(k) of the Telecommunications Act of 1996 (Citizenship Requirements)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 403(k) of the Telecommunications Act of 1996 amends Sections 310(b) (3) and (4) of the Communications Act of 1934 to remove the restrictions against corporate licensees having alien officers and directors. To implement that statutory change, the Commission has amended rules relating to the citizenship of licensees of broadcast, common carrier, aeronautical en route, and aeronautical fixed radio stations to conform to the new statutory language. The Commission has also modified in part related policies regarding partnerships that it had adopted to implement the (now repealed) restrictions on foreign officers and directors.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: S. Lee Martin, Office of General Counsel, (202) 418–1754.

SUPPLEMENTARY INFORMATION:

Adopted: September 27, 1996
Released: October 9, 1996

1. On February 8, 1996, the Telecommunications Act of 1996 became law.[1] Section 403(k) of the Telecom Act amends sections 310(b) (3) and (4) of the Communications Act of 1934 to remove the restrictions against corporate licensees having alien officers or directors. In this order, we amend certain Commission rules relating to the citizenship requirements for licenses for broadcast, common carrier, aeronautical en route, and aeronautical fixed radio stations to conform to the amended statutory language. To further implement the statutory change, we also modify in part certain policies treating certain alien partners as the equivalent of alien officers and directors set forth in *Request for Declaratory Ruling Concerning the Citizenship Requirements of Section 310(b)(3) and (4) of the Communications Act of 1934, as amended,* 103 FCC 2d 511 (1985), *recon. in part,* 1 FCC Rcd 12 (1986) (*Wilner and Scheiner*) and in *Market Entry and Regulation of Foreign-affiliated Entities,* 60 FR 67332 (Dec. 29, 1995) (*Foreign Carrier Entry Order*).

2. Section 310(b) of the Communications Act applies to licenses for broadcast, common carrier, aeronautical en route, and aeronautical fixed radio stations. Prior to enactment of the Telecom Act, section 310(b)(3) precluded a license being granted to or held by any corporation with any alien officer or director, or by a corporation in which more than one-fifth of the capital stock was owned or voted by aliens. The prior version of section 310(b)(4), which applies where another corporation directly or indirectly controls a corporate licensee, provided that the Commission may deny an application or revoke a license where any officer of the parent corporation is an alien, more than one-fourth of its directors are aliens, or more than one-fourth of the capital stock is owned or voted by aliens, if it finds that such denial or revocation serves the public interest.

3. To implement the statute, the Commission included the statutory restrictions on alien ownership set forth in sections 310(b) (3) and (4) in certain rules that define the eligibility criteria for holding licenses for certain types of broadcast, common carrier, and aeronautical stations. In addition, various other Commission actions, while not codified, also effectuate these statutory provisions. In *Wilner and Scheiner* we issued a declaratory ruling prescribing the manner in which sections 310(b) (3) and (4) apply to corporate and partnership interests. In doing so, we advised that the statutory restrictions governing foreign officers or directors apply to partners in a partnership without any limited partners, to general partners in a limited partnership, and to non-insulated limited partners. 103 FCC 2d at 520 n.43. And, in our *Foreign Carrier Entry Order,* 11 FCC Rcd at 3941–56 ¶¶ 179–219, we adopted an ''effective competitive opportunities'' test to be considered, along with additional public interest factors, in deciding whether it is in the public interest to permit alien ownership of licensees of common carrier radio facilities in excess of the statutory benchmarks set forth in section 310(b)(4). We identified several factors as being germane to this analysis, including ''the extent of alien participation in the applicant's parent corporation (in particular the presence of alien officers and directors in excess of the statutory benchmarks).'' *Id.* at 3955 ¶ 216.

4. Section 403 of the Telecom Act provides for the elimination of unnecessary Commission regulations and functions. In this context, section 403(k) amends sections 310(b) (3) and (4) to remove the restriction on a broadcast, common carrier, or aeronautical license being held by or granted to a corporation having alien officers or directors. The restrictions on how much of the capital stock may be owned or voted by aliens have not been changed.

5. Current Commission rules that govern the licensing of commercial mobile radio services (Part 20), domestic public fixed radio services (Part 21), public mobile services (Part 22),

[1] Pub. L. 104–104, 110 Stat. 56 (1996) (''1996 Telecommunications Act'').

narrowband and broadband personal communications services (Part 24), general wireless communications service (Part 26), stations in the maritime services (Part 80), aviation services (Part 87), private land mobile radio services (Part 90), direct broadcast satellite service (Part 100), and fixed microwave services (Part 101)[2] incorporate verbatim the statutory restrictions on alien ownership embodied in sections 310(b) (3) and (4). Accordingly, as reflected in the attached Appendix, we amend the applicable rules that prescribe the citizenship requirements for licensees in these various communications services to eliminate the restrictions against corporations with alien officers or directors. For other services, where these restrictions are not codified in the rules, no changes to our rules are needed.

6. Consistent with the elimination of the restrictions on alien officers and directors of corporate licensees, we will also no longer accord any independent significance under the statute to positions held by aliens that may convey the power to manage the affairs of an unincorporated entity or to bind a partnership—such as a general partner or a noninsulated limited partner. Our action in this regard does not alter our more general determination that, for purposes of ownership attribution in connection with the multiple ownership rules, general partners and noninsulated limited partners exercise powers and exert influence functionally equivalent to officers and directors in a corporation. Similarly, in applying the ''effective competition opportunities'' test that we adopted in the *Foreign Carrier Entry Order,* we will no longer consider the presence of alien officers and/or directors in the parent company of a common carrier licensee in determining, pursuant to section 310(b)(4), whether it serves the public interest to allow an alien entity or combination of entities to control more than 25 percent of the capital stock of a company that directly or indirectly controls a common carrier licensee.

7. In making these changes to our rules and policies, we emphasize that, since Congress has retained those portions of sections 310 (b)(3) and (b)(4) that restrict alien ownership and/or voting interests, our action does not affect these restrictions, which we have previously held to encompass partnership and other noncorporate interests. *Wilner and Scheiner,* 103 FCC 2d at 516 ¶ 10. Thus, in calculating whether aliens exceed the ownership and voting benchmarks set forth in these statutory provisions, we will continue to follow the guidelines specified in *Wilner and Scheiner* that relate to the computation of such interests.

8. The rule changes that we adopt today simply conform our rules and policies to section 403(k) of the Telecom Act. These changes thus merely implement the new Congressional directive to remove the restriction that no broadcast, common carrier, or aeronautical license may be held by or granted to a corporation having alien officers or directors. Accordingly, we find for good cause that compliance with the general notice and comment provisions of the Administrative Procedure Act is unnecessary. See 5 U.S.C. 553(b)(B). For similar reasons, and because the changes ease restrictions on alien participation, compliance with the effective date provision of the Administrative Procedure Act also is unnecessary. 5 U.S.C. 553(d).

9. ACCORDINGLY, *it is ordered,* That, pursuant to Sections 154(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), Parts 20, 21, 22, 24, 26, 80, 87, 90, 100 and 101 of the Commission's Rules, 47 CFR Parts 20, 21, 22, 24, 26, 80, 87, 90, 100, and 101 are amended as set forth below, effective October 28, 1996.

List of Subjects

47 CFR Parts 20, 21, 22, and 101

Communications common carriers, Radio.

47 CFR Parts 24, 26, 80, 87, 90 and 100

Radio.

Federal Communications Commission

William F. Caton,

Acting Secretary.

Rule Changes

Parts 20, 21, 22, 24, 26, 80, 87, 90, 100 and 101 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 251–2, 303, and 332, 48 Stat. 1066, 1062, as amended; 47 U.S.C. 154, 251–4, 303, and 332, unless otherwise noted.

2. Section 20.5 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 20.5 Citizenship.

(a) * * *

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or

(5) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

§ 21.4 [Amended]

4. Section 21.4 is amended by removing paragraphs (d) and (f), and redesignating paragraphs (e) and (g) as paragraphs (d) and (e), respectively.

PART 22—PUBLIC MOBILE SERVICES

5. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

6. Section 22.5 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 22.5 Citizenship.

* * * * *

(b) * * *

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the

[2] See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, 61 FR 26670 (May 28, 1996).

laws of a foreign country, if the FCC finds that the public interest will be served by the refusal or revocation of such license.

PART 24—PERSONAL COMMUNICATIONS SERVICES

7. The authority citation for Part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

8. Section 24.404 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 24.404 Eligibility.

* * * * *

(b) * * *

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license. A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

9. Section 24.804 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 24.804 Eligibility.

* * * * *

(b) * * *

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

* * * * *

PART 26—GENERAL WIRELESS COMMUNICATIONS SERVICE

10. The authority citation for Part 26 continues to read as follows:

Authority: 47 U.S.C. Sections 154, 301, 302, 303, 309 and 332, unless otherwise noted.

11. Section 26.302 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 26.302 Eligibility.

* * * * *

(b) * * *

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

12. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.15 [Amended]

13. Section 80.15 is amended by removing paragraphs (b)(4) and (b)(6), and redesignating paragraphs (b)(5) and (b)(7) as paragraphs (b)(4) and (b)(5), respectively, and adding the word ''or'' at the end of newly designated paragraph (b)(4).

PART 87—AVIATION SERVICES

14. The authority citation for Part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.19 [Amended]

15. Section 87.19 is amended by removing paragraph (b)(3) and by redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

16. The authority citation for Part 90 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, and 332.

17. Section 90.115 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 90.115 Foreign government and alien eligibility.

* * * * *

(b) * * *

(3) A corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(4) A corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

PART 100—DIRECT BROADCAST SATELLITE SERVICE

18. The authority citation for Part 100 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309, and 554, unless otherwise noted.

§ 100.11 [Amended]

19. Section 100.11 is amended by removing paragraphs (d) and (f), and redesignating paragraphs (e) and (g) as paragraphs (d) and (e), respectively, and adding the word ''or'' at the end of newly designated paragraph (d).

PART 101—FIXED MICROWAVE SERVICES

20. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, and 303.

§ 101.7 [Amended]

21. Section 101.7 is amended by removing paragraphs (b)(3) and (b)(5), and redesignating paragraphs (b)(4) and (b)(6) as (b)(3) and (b)(4), respectively,

and adding the word ''or'' at the end of newly designated paragraph (b)(3).

[FR Doc. 96–27289 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 25

[IB Docket No. 95–41; FCC 96–14]

Satellite Licensing Rules; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Tuesday, March 12, 1996, (61 FR 9946). The regulations related to the elimination of regulatory distinctions between U.S.-licensed domestic satellites and separate international satellite systems, resulting in uniform treatment of all U.S.-licensed geostationary fixed-satellites.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: John M. Coles, Attorney, Satellite Policy Branch, International Bureau (202) 418–0771.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, supersede portions of Part 25 of the Commission's Rules.

Need for Correction

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

List of Subjects in 47 CFR Part 25

Communications common carriers, Radio, Satellites.

Accordingly, 47 CFR Part 25 is corrected by making the following correcting amendments:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising paragraphs (d) and (f) to read as follows:

§ 25.113 Construction permits.

* * * * *

(d) *Painting and lighting.* The owner of each antenna structure required to be painted and/or illuminated under the provisions of Section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting.

* * * * *

(f) In addition to the construction permit required by paragraph (a) of this section, a launch authorization must be applied for and granted before a space station may be launched and operated in orbit. Request for launch and operation authorization and station license may be included in the application for space station construction permit. A launch authorization and station license may also be requested at any time for a space station constructed as an on-ground spare satellite. However, an application for authority to launch and operate an on-ground spare satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station which has been lost as a result of a launch failure or a catastrophic in-orbit failure.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–27356 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 64

Interstate Pay-Per-Call and Other Information Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published August 25, 1993, (58 FR 44769). The regulations related to disclosure and dissemination of pay-per-call information by common carriers.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Romano (202) 418–0975.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction, affects ''any common carrier that assigns a telephone number to a provider of interstate pay-per-call services and offers billing and collection services to such provider.''

Need for Correction

As published, the final regulation contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 47 CFR Part 64

Telephone.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Accordingly, 47 CFR part 64 is corrected by making the following correcting amendment:

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

Authority: Secs. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228 unless otherwise noted.

§ 64.1509 [Corrected]

2. Section 64.1509(b)(2)is amended by removing the words ''§ 64.1510(a)(iv)'' and adding in their place ''§ 64.1510(a)(1)''.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–27567 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–278]

Organization and Delegation of Powers and Duties Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. Chapter 45, Uninspected Commercial Fishing Industry Vessels, pertaining to safety standards and equipment, fish processing vessel certification, prohibited acts, termination of unsafe operations, exemptions and assessment of penalties for unsafe acts. In order that the Code of Federal Regulations reflect these delegations, a change is necessary.

DATES: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: LCDR Mark Bobal, Marine Safety and Environmental Protection (G–MSO–2), (202) 267–0836, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Ron Gordon, Office of the Executive Secretariat, S–10, (202) 366–9761, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Public Law 100–424 is the Commercial Fishing Industry Vessel Safety Act of 1988 (hereafter referred to as the Act). Title 46, U.S. Code, was amended by the Act to prescribe minimum safety regulations for uninspected commercial fishing, fish processing and fish tender vessels. The Secretary of Transportation is delegating his authority under the Act to the commandant of the Coast Guard.

The Act requires the Secretary of Transportation to prescribe regulations pertaining to navigation equipment, lifesaving equipment, communication equipment, operational stability, and collection of casualty information, and to address other problems which have historically contributed to making the commercial fishing industry the most dangerous industry in the United States.

This rule adds a specific delegation of authority to 49 CFR § 1.46, thus amending the codification to reflect the Secretarial delegation of authority to the Commandant of the Coast Guard.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b), and the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the Federal Register.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.46 is amended by adding a new paragraph (ccc) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ccc) Carry out the functions and exercise the authority vested in the Secretary by 46 U.S. Code Chapter 45 (uninspected commercial fishing industry vessels), as enacted by the Commercial Fishing Industry Vessel Safety Act of 1988, as amended, Title 46, 4501 et seq., Pub. L. No. 100–424, 102 Stat. 1585. This authority may be redelegated.

* * * * *

Issued at Washington, DC, this 16th day of October, 1996.

Federico Peña

Secretary of Transportation.

[FR Doc. 96–27591 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 61, No. 209
Monday, October 28, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31 and 35A 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 Learjet Model 31 and 35A airplanes, that currently requires replacement of two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the connector that is connected to the auxiliary cabin heater relay box. That AD was prompted by a report indicating that two segments of the 16 AWG wire in the auxiliary cabin heater, which were spliced during production, do not provide adequate current-carrying capacity. This new proposed action would require the installation of a new replacement wire assembly. The actions specified by the proposed AD are intended to prevent electrical arcing and consequent fire hazard that could result from wiring with inadequate current-carrying capacity.

DATES: Comments must be received by December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–202–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 Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (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 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–202–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–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 15, 1996, the FAA issued AD 96–11–07, amendment 39–9632 (61 FR 26090, May 24, 1996), applicable to certain Learjet Model 31 and 35A airplanes, to require replacement of two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the connector that is connected to the auxiliary cabin heater relay box. That action was prompted by a report that two segments of the 16 AWG wire in the auxiliary cabin heater that were spliced during production do not provide adequate current-carrying capacity. The requirements of that AD are intended to prevent electrical arcing and consequent fire hazard that could result from wiring with inadequate current-carrying capacity.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has been notified that the replacement installation kit specified in Learjet Service Bulletins SB 31–21–10 and SB 35–21–24, (which were referenced in AD 96–11–07 as the appropriate sources of service information) contains a socket contact that has an incorrect part number for use in the P190 connector. This incorrect part number prevents the replacement equipment from being installed properly.

The FAA recently reviewed and approved Revision 1 of Learjet Service Bulletins SB 31–21–10, dated May 17, 1996 (for Model 31 airplanes), and SB 35–21–24, dated May 17, 1996 (for Model 35 airplanes). These revised service bulletins describe new replacement procedures that include installing a new wire assembly kit that contains the correct socket contact, as well as a precrimped 8 AWG wire (2 ft. in length).

The FAA finds that accomplishment of the wiring assembly installation using this new replacement installation kit will positively address the unsafe condition identified as electrical arcing and consequent fire hazard, as a result of wiring with inadequate current-carrying capacity.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

supersede AD 96–11–07. It would require replacement of the two segments of 16 AWG wire with a 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box. The actions would be required to be accomplished in accordance with Revision 1 of the service bulletins described previously.

The FAA has been advised that some operators, when attempting to comply with AD 96–11–07, may already have replaced the wiring assembly using the correct part in the P190 connector, which would be mandated by this proposed AD. For those operators, no additional work would be required by this AD.

Cost Impact

There are approximately 52 Learjet Model 31 and 35A airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD.

The 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 be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $10,560, or $240 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. The FAA has been advised, however, that some operators already have installed equipment that is the equivalent to that which would be required by this AD. Therefore, the future economic cost impact of this proposed rule on U.S. operators is expected to be less than the cost impact figure indicated above.

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 39–9632 (61 FR 26090, May 24, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Learjet, Inc.: Docket 96–NM–202–AD. Supersedes AD 96–11–07, Amendment 39–9632.

Applicability: Model 31 airplanes having serial numbers 31–002 through 31–029 inclusive, and Model 35A airplanes having serial numbers 35–647 through 35–670 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and consequent fire hazard, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box, in accordance with Learjet Service Bulletin SB 31–21–10, Revision 1, dated May 17, 1996 (for Model 31 airplanes), or Learjet Service Bulletin SB 35–21–24, Revision 1, dated May 17, 1996 (for Model 35A airplanes), as applicable.

Note 2: Accomplishment of the replacement in accordance with the procedures specified in Learjet Service Bulletin SB 31–21–10 or SB 35–21–24 (original issue), both dated August 11, 1995, but using equipment that is identical or equivalent to that of the applicable kit specified in Revision 1 of those service bulletins, is considered to be acceptable for compliance with the requirements of paragraph (a) of this AD.

(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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

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

Issued in Renton, Washington, on October 21, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27522 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–85–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require an inspection to determine the thickness of the intercostal that attaches the third crew member seat to the floor structure

in the flight compartment, and replacement, if necessary. This proposal is prompted by a report from the manufacturer indicating that intercostals have been installed that are not of sufficient thickness (and consequent strength) to support the third crew member seat during emergency landing dynamic conditions. The actions specified by the proposed AD are intended to prevent the failure of this intercostal during an emergency landing, which could consequently result in injury to the flight crew.

DATES: Comments must be received by December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–85–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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; 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–85–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–85–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 certain Jetstream 4101 airplanes. The CAA advises that it has received a report from the manufacturer indicating that some intercostals that attach the third crew member seat (''third crew seat'') to the floor structure in the flight compartment may not have been manufactured using material of the correct thickness. Consequently, these parts may lack the necessary strength to withstand the stresses exerted during emergency landing dynamic conditions.

Material stresses existing in the intercostal during an emergency landing are a function of the weight of the third crew seat, the weight of the person in the seat, and the weight of the carry-on items in the forward right stowage compartment. Although an intercostal manufactured from material of the incorrect thickness can support the seat and the person sitting in it when the total weight of carry-on items in the forward right stowage compartment is limited to 100 pounds or less, this intercostal could fail when the carry-on items stored in this compartment exceed this limit. Installation of an intercostal that is not of sufficient thickness (and consequent strength) could result the failure of the intercostal during an emergency landing, which could cause the third crew seat to become detached from the floor structure in the flight compartment. This condition, consequently, could result in injury to the flight crew.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A53–030, dated January 19, 1996, which describes procedures for inspecting the intercostal that attaches the third seat to the floor structure in the flight compartment to determine whether this part is manufactured from material having the correct thickness. Parts manufactured from material having an incorrect thickness are to be replaced with new parts having the correct material thickness.

The service bulletin also describes an optional placarding procedure to prohibit use of the third crew seat when the total weight contained in the forward right stowage area of the airplane exceeds 100 pounds. (This area is where the flight crew generally stows its carry-on items.)

The CAA classified this service bulletin as mandatory and issued British airworthiness directive 006–01–96, dated February 7, 1996, 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 require inspection of the intercostal which attaches the third crew seat to the floor structure in the flight compartment to determine the thickness of this part; and replacement with a new intercostal of the correct thickness, if necessary. The proposed AD also would provide for use of a temporary, optional placarding procedure that entails prohibiting the use of the third crew seat under certain conditions until the intercostal is replaced. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 15 Jetstream Model 4101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $900, or $60 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:

Jetstream Aircraft Limited: Docket 96–NM–85–AD.

Applicability: Model 4101 airplanes, as listed in Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure during emergency landing dynamic conditions of the intercostal that attaches the third crew member seat (''third crew seat'') to the floor structure in the flight compartment, which could consequently result in injury to the flight crew, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the intercostal in the floor structure that supports the third crew seat in the flight compartment to determine the thickness of this part, in accordance with Part 1 of Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996.

(b) If the thickness of the intercostal is 0.064 inch, no further action is required by this AD.

(c) If the thickness of the intercostal is 0.048 inch, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996. After replacement, no further action is required by this AD. Or

(2) Prior to further flight, install a placard, in accordance with Jetstream Alert Service Bulletin J41–A53–030, dated January 19, 1996, to prohibit use of the third crew seat when the total weight of carry-on items stored in the forward right stowage area is more than 100 pounds. Within 6 months after installation of the placard, replace the intercostal with a new part manufactured from material having the correct thickness, in accordance with the service bulletin. After installation of the new intercostal, the placard may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

Issued in Renton, Washington, on October 21, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27521 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 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 certain Saab Model SAAB 2000 series airplanes. This proposal would require modification and sealing of the firezone compartment of the nacelle of the left and right engines. This proposal is prompted by reports indicating that firezone compartments have not been completely sealed. The actions specified by the proposed AD are intended to prevent flame, fuel, and vapor from entering compartments behind the firezone compartment. This condition, if not corrected, and if combined with a fire source in the firezone compartment, could result in an uncontrollable fire outside the firezone compartment.

DATES: Comments must be received by December 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–233–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 SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; 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–233–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–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports indicating that the firezone compartment of the nacelle of the left and right engines was not completely sealed during production of the airplane. Consequently, flame, fuel, and vapor could enter compartments behind the firezone compartment. This condition, if not corrected, and if combined with a fire source in a firezone compartment, could result in an uncontrollable fire outside the firezone compartment.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–54–008, dated March 7, 1996, which describes procedures for modifying and sealing the firezone compartment of the nacelle of the left and right engines. Accomplishment of the modification and sealing will prevent the passage of flame, fuel, and vapor into compartments behind the firezone compartment. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–090, dated March 11, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, 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 and sealing of the firezone compartment of the nacelle of the left and right engines. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 3 Saab Model SAAB 2000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $360 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:

SAAB Aircraft AB: Docket 96–NM–233–AD.

Applicability: Model SAAB 2000 series airplanes, having serial numbers 002 through 025, inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent flame, fuel, and vapor from entering compartments behind the firezone compartment of the nacelle of the left and right engines, which, if combined with a fire source in a firezone compartment, could result in an uncontrollable fire outside the firezone compartment, accomplish the following:

(a) Prior to the accumulation of 200 hours time in service after the effective date of this AD, modify and seal the firezone compartment of the nacelle of the left and right engines, in accordance with Saab Service Bulletin 2000–54–008, dated March 7, 1996.

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

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

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

Issued in Renton, Washington, on October 21, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27520 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 253

Guides for the Feather and Down Products Industry

AGENCY: Federal Trade Commission.

ACTION: Request for additional public comment.

SUMMARY: On April 15, 1994, the Commission published a Federal Register Notice initiating the regulatory review of the Federal Trade Commission's (''Commission'') Guides for the Feather and Down Products Industry (''Guides''), 16 CFR 253, and seeking public comment. This notice summarizes the comments received, announces the Commission's preliminary determinations regarding certain amendments to the Guides, and seeks further comment on other issues.

The Commission has preliminarily determined to amend or rescind the following sections of the Guides: (1) Section 253.2 ''Misrepresentation in general''; (2) Section 253.3 ''Use of trade names, symbols, depictions, etc.''; (3) Section 253.4 ''Misuse of the term 'Tan-O-Quil-QM' ''; (4) Section 253.6(e) ''Testing''; (5) Section 253.10 ''Cleanliness of filling material''; and (6) Section 253.11 ''Disclosure as to size.''

To assist the Commission in determining whether it should modify certain other sections of the Guides, the Commission requests additional public comment regarding: (1) The tolerance of landfowl feathers in waterfowl feather products; and (2) the tolerance of damaged feathers in feather and down products. Further, to assist the Commission in determining whether it should modify the current tolerances in filling material or develop new guides that measure other qualities of feather and down products, the Commission requests public comment regarding: (1) The continuing usefulness or relevance of the Guides; (2) the existing standards measuring the benefits or qualities of feather and down filling material; and (3) the tolerances as applied to products containing blends of feathers and down.

DATES: Written comments will be accepted until January 28, 1997.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about the Guides for the Feather and Down Products Industry should be identified as ''16 CFR Part 253—Comment.'' If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Alice Au, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264–1210.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Guides for the Feather and Down Products Industry address claims for the advertising, labeling, and sale of products that are wholly or partially filled with feathers or down, and all bulk stocks of processed feathers or down intended for use or used in the manufacture of such products. The Guides also address the use of trade names, symbols, and depictions; the tolerances for filling material; the labeling of products using crushed and damaged feathers; the disclosure of the use of secondhand filling material; the cleanliness of filling material; and the disclosure of the size of feather and down products.

As part of the Commission's ongoing review of all current Commission rules, regulations, and guides, the Commission published a Federal Register notice on April 15, 1994, 59 FR 18006 (1994) (''1994 FRN''), seeking comments until June 14, 1994 about the regulatory and economic costs and benefits of the Guides. The Commission's request for public comment elicited ten comments from the industry and none from consumers or consumer groups: (1) The Association of Bedding and Furniture Law Officials (''ABFLO''), (2) J.C. Penney Company, Inc., (3) Bernard S. Liebman, a chemist and chairman of the feather and down task group of the American Society for Testing and Materials (''ASTM''), (4) Down Lite International, (5) L.L. Bean, Inc., (6) Pacific Coast Feather Company, (7) International Down and Feather Testing Laboratory, (8) United Feather and Down Inc., (9) American Down Association, and (10) Pillowtex Corporation. This notice summarizes the public comment received in response to the 1994 FRN; describes the

Commission's proposed changes to the Guides; and solicits additional public comment regarding certain issues.

II. Public Comment

In response to the 1994 FRN's questions regarding the Guides' benefits, costs, and whether there is a continuing need for the Guides, the commenters uniformly support retaining the Guides. The commenters recommend that the Commission retain the Guides for the ''safety and protection'' of consumers [1] and say that ''[i]t is in the public interest to keep Guides in place.'' [2] The most commonly mentioned benefit of the Guides is that they assure a standard of quality to consumers that is not too burdensome to industry. One commenter noted that because ''[d]own is a product that is difficult, at best, for the consumer to evaluate * * * there needs to be a standard on which to base the quality of the product.'' [3] The commenters believe that the Guides have ''saved monies for consumers and prevent[ed] profiteering by some processors'' [4] and offered a ''level playing field for manufacturers.'' [5]

The commenters generally stated that the Guides ''have not imposed costs on purchasers'' [6] and that ''costs imposed are principally costs associated with evaluation of down to determine acceptability for use as the product will be labeled and advertised.'' [7] Another commenter added that ''[t]he Testing, by nature, is very time consuming and costly; but, is a necessity to monitor and control and ensure the purchaser receives the proper product quality.'' [8]

In response to a question regarding changes to the Guides that could increase benefits to purchasers, several commenters recommended the establishment of a new guide addressing fill power,[9] which measures the ability of feathers and down to resist compression as pressure is placed on a sample of feathers and down. The term ''fill power'' appears in many advertisements for down garments and comforters and is occasionally being used in down pillow ads.

A fill power guide may provide a valuable way for consumers to compare and evaluate feather and down products. Currently, however, there are many tests purporting to measure fill power that provide different results, and therefore, their comparative use to consumers is limited. The Commission has learned that Japan has specified a particular fill power standard that may be an appropriate and useful standard for use in the United States as well as provide a basis for international harmonization of industry practices.

Further, like a possible fill power standard, a rating system measuring the warmth factor of down products, similar to the R-Value ratings for home insulation, may be an alternative way to make useful claims about down products. The Commission is interested in receiving information about whether there is consensus on how to measure warmth in down products, whether standards for warmth factor ratings exist, how such standards work, and whether such standards are as useful or more useful than current claims about content or fill power claims.

Accordingly, to determine whether to provide guidance on these issues, the Commission is requesting further information about fill power, the Japanese fill power standard, warmth factor ratings similar to R-Value, and any other standards for measuring the qualities of feather and down products. The Commission also is interested in learning whether fill power claims or other warmth factor ratings, if standardized, are more useful to consumers than percentage claims, and whether new guidance on fill power or other warmth factor ratings should replace the current or proposed guidance on percentage content.

One commenter expressed concern about the use of fictitious sale prices to market feather and down products.[10] Fictitious pricing is a selling practice by which a retailer advertises products at inflated prices for the sole purpose of being able to offer a large discount from the original price. Although the Guides do not specifically address fictitious pricing of feather and down products, such practices can be addressed by the general prohibition of unfair or deceptive practices in Section 5 of the FTC Act along with the Guides'' Section 253.2 ''Misrepresentation in general.''

In response to the question regarding conflicts with other laws or regulations, several commenters said that all of the states that regulate this industry have essentially deferred to the FTC Guides.[11] Two commenters recommended that all state requirements be based on the federal standard.[12] The Commission appreciates the industry's desire for more uniform state and federal standards, and as appropriate, will continue its work with other enforcement agencies to promote consistent standards.

In response to the question about changed technological or economic conditions that have affected the industry, two commenters said that they were not aware of any technological or economic changes that would have an impact upon the Guides.[13] One commenter noted, however, that ''[e]conomic conditions have changed significantly in that more down and feather[s] are imported into the United States, and it is difficult to monitor and track small lots.''[14] The Commission will continue to monitor down content claims and encourages industry members and other interested parties to provide information to the Commission and to U.S. Customs regarding possible violations involving imported raw stock.

One commenter suggested greater distribution of the information contained in the Guides to increase public awareness of the industry standards.[15] When this regulatory review is completed, the Commission will consider developing educational materials that the Commission and industry members may provide to both businesses and consumers. Several industry members suggested that more enforcement would benefit consumers and industry. The Commission will continue to monitor industry practices and will take enforcement action pursuant to the FTC Act when appropriate.

III. Discussion of Proposed Amendments to the Guides

The Commission has preliminarily determined, subject to final review and approval after the comment period, that it will make the following amendments to the Guides:

A. Section 253.2—Misrepresentation in General and Section 253.3—Use of Trade Names, Symbols, Depictions, etc.

Section 253.2 ''Misrepresentation in general'' and Section 253.3 ''Use of

[1] Comment B15621300003, Letter from Bernard S. Liebman at 1 (''Liebman Comment'').

[2] Comment B15621300004, Letter from Larry H. Werthaiser, Down Lite International at 1 (''Down Lite Comment'').

[3] Comment B15621300005, Letter from Donald G. Thacker, Manager of Product Quality, L.L. Bean, Inc. at 1 (''L.L. Bean Comment'').

[4] Liebman Comment at 1.

[5] Comment B156213000010, Letter from Chuck Northcutt, Director of Quality Assurance, Pillowtex Corporation at 1 (''Pillowtex Comment'').

[6] Comment B15621300006, Letter from Jerry Hanauer, CEO and Chairman, Pacific Coast Feather Company at 1 (''Pacific Coast Feather Comment'').

[7] L.L. Bean Comment at 1.

[8] Pillowtex Comment at 1.

[9] Liebman Comment at 2; Down Lite Comment at 4.

[10] Down Lite Comment at 2.

[11] Liebman Comment at 2; Pacific Coast Feather Comment at 2; Comment B15621300008, Letter from Benjamin Belfer, Vice President, United Feather and Down, Inc. at 2 (''UF&D Comment'').

[12] Pillowtex Comment at 2; UF&D Comment at 2.

[13] Pacific Coast Feather Comment at 2; UF&D Comment at 2.

[14] Pillowtex Comment at 3.

[15] Id. at 1.

trade names, symbols, depictions, etc.'' include outdated language to describe the Commission's standard for deception. In the 1994 FRN, the Commission proposed replacing this outdated language with the Commission's current deception standard, as set forth in *Cliffdale Associates, Inc.*, 103 F.T.C. 110 (1984), and subsequent cases. The Commission plans to amend the affected sections of the Guides accordingly.

B. Section 253.4—Misuse of the Term ''Tan-O-Quil-QM''

Section 253.4 prohibits the misuse of the term ''Tan-O-Quil-QM,'' which refers to a chemical treatment developed by the U.S. Army Natick Research, Development, and Engineering Center (''Natick Center'') to enhance the properties of feathers and down. Between 1970 and 1980, the use of the Tan-O-Quil-QM treatment began to decline, in large part due to the enforcement of clean water requirements that made the treatment prohibitively expensive. Representatives from the American Down Association, the California Bureau of Home Furnishings Laboratory, the Natick Center, and other industry members confirm that the treatment is not used on a commercial basis today.

The 1994 FRN asked: Is there a continuing need for § 253.4 ''Misuse of the term 'Tan-O-Quil-QM' ''? One commenter noted that few companies produce Tan-O-Quil-QM products today but thought that the Commission should retain the Guide to prevent misuse of the term,[16] and three other commenters stated, without explanation, that there was a continuing need for the Guide.[17]

After considering all the information about the treatment, the Commission plans to eliminate the Guide regarding the Tan-O-Quil-QM treatment because: (1) The treatment is no longer used on a commercial basis; (2) the elimination of the Guide does not prohibit any industry member from using the treatment as long as no misrepresentations are made; and (3) the Guide does not address any unique consumer protection issue that cannot be addressed by Section 5 of the FTC Act, which prohibits unfair or deceptive acts or practices, and by Guide Sections 253.2 ''Misrepresentation in general'' and 253.3 ''Use of trade names, symbols, depictions, etc.''

[16] Liebman Comment at 3.

[17] Pacific Coast Feather Comment at 2; UF&D Comment at 2; Pillowtex Comment at 3.

C. Section 253.6(e)—Testing

In response to the question regarding the Guides' burdens and costs, some commenters remarked on the high cost of testing the composition of feather and down products as provided by Section 253.6(e) ''Testing.'' Other commenters said that the cost of testing products for quality assurance was ''incontestably money well spent and of benefit to the industry, the retail industry, and consumers.'' [18] Other than the testing issue, the commenters did not identify any other significant burdens or costs that the Guides have imposed on industry.

The Commission preliminarily has determined to make two amendments to Section 253.6(e) ''Testing.'' First, the Commission will update this section to include reference to the September 14, 1965 and October 25, 1968 amendments to Federal Standard 148a entitled ''Classification, Identification, and Testing of Feather Filling Material.'' This nonsubstantive amendment merely provides a full citation to Federal Standard 148a.

Second, the Commission plans to amend this section by permitting the use of less costly alternative testing methods that yield reliable results. Although considered the most reliable test method by laboratories of enforcement agencies, Federal Standard 148a is also recognized to be a very expensive and time-consuming test. Because of these drawbacks, five industry commenters recommended that the FTC adopt an alternative test method first developed by ABFLO and later adopted by ASTM.[19] To provide greater flexibility to industry while ensuring test reliability, the Commission plans to amend this section to permit use of any competent and reliable scientific test method.

D. Section 253.10—Cleanliness of Filling Material

One measure of cleanliness of down and feather products is the ''oxygen number,'' which reflects the oxidizable matter content such as blood and excreta in the plumage. Cleaner products have lower oxygen numbers. Section 253.10 requires that down and feather products be clean and that products have an oxygen number of no more than 20.[20]

One commenter recommended that the oxygen number be reduced to 10 because modern processing equipment and chemicals produce cleaner products, and other countries have limited the oxygen number to 10.[21] Some industry members confirmed that much of today's product is routinely tested to have oxygen numbers between 0–5, so an oxygen level of 10 is a reasonable outer limit. Further, several provinces in Canada are in the process of adopting a regulation requiring an oxygen number of 10 or lower. Therefore, in the interest of harmonizing U.S. and Canadian standards and ensuring cleaner products for consumers, the Commission plans to lower the maximum acceptable oxygen number from 20 to 10.

E. Section 253.11—Disclosure as to Size

Section 253.11 ''Disclosure as to size'' requires the disclosure of the ''finished size'' instead of the ''cut size'' of down and feather sleeping bags, comforters, pillows, and other similar industry products. The Commission has determined preliminarily to eliminate this section in light of changes in industry practices and the existence of laws in nearly all of the states that mandate point-of-sale disclosures similar to those required by the Section 253.11. There are no known violations of this section, and many states already have laws requiring the disclosure of the finished sizes of filled products.[22]

IV. Other Issues Raised During The Regulatory Review Process

The 1994 FRN and the comments received in response to the FRN raised questions regarding three sections of the Guides: Section 253.6(b) ''Waterfowl feather products,'' Section 253.8 ''Damaged feathers,'' and Section 253.6 ''Tolerances in filling material.'' The Commission requests additional public comment before making any final changes to these sections.

[18] Pacific Coast Feather Comment at 1.

[19] Comment B15621300001, Letter from A. Richard Geisler, Chief of Pennsylvania's Division of Bedding and Upholstery and Vice President of ABFLO, at 1 (''ABFLO Comment''); Pacific Coast Feather Comment at 2; Comment B15621300007, Letter from Wilford K. Lieber, President, International Down and Feather Testing Laboratory (''IDFTL'') at 1 (''IDFTL Comment''); UF&D Comment at 2; Comment B15621300009, Letter from Howard C. Winslow, Executive Director, American Down Association (''ADA'') at 2 (''ADA Comment'').

[20] The oxygen number of 20 is measured as follows: 20 grams of oxygen per 100,000 grams of sample. The Guide refers to Federal Standard 148a for a test method to determine the oxygen number. The Commission plans to update this section to include reference to the September 14, 1965 and October 25, 1968 amendments to Federal Standard 148a.

[21] Liebman Comment at 2.

[22] The proposed elimination of this Section 253.11 is consistent with the repeal of the Commission's Sleeping Bag Rule, 60 FR 65528 (1995), and Tablecloth Rule, 60 FR 65530 (1995).

A. Section 253.6(b)—Waterfowl feather products

Section 253.6(b) permits up to 8% nonwaterfowl feathers in waterfowl feather products. Chickens and turkeys are the main sources of nonwaterfowl feathers, and geese and ducks are the main sources of waterfowl feathers. One commenter explained that lowering the current tolerance of nonwaterfowl feathers from 8% to 4% will not increase costs to consumers and will provide a better product to consumers.[23] One commenter recommended the reduction of the tolerance because excessive (i.e., as much as 8%) chicken and turkey feathers in a waterfowl feather product implied that there had been deliberate adulteration by the addition of nonwaterfowl feathers, which have fewer benefits than goose and duck feathers.[24] Commenters explained that a reduction in the tolerance is appropriate because geese and ducks are not commercially farmed with chickens and turkeys, so there should be very little natural contamination of waterfowl with nonwaterfowl feathers.[25] Moreover, the 8% tolerance of nonwaterfowl feathers was due, in part, to now obsolete military requirements to include certain amounts of chicken and turkey feathers in military down and waterfowl feather products specifications.

The Commission has tentatively determined that the current 8% tolerance of chicken and turkey feathers in goose and duck products should be reduced, but solicits comment on whether it should be reduced to 2%, rather than the 4% recommended by some commenters. A 2% tolerance of nonwaterfowl feathers in waterfowl feather products will match the long-established tolerance of 2% nonwaterfowl feathers in down products found in Section 253.6(a) ''Down products.'' Because the raw material source for goose and duck down and feathers is the same, there appears to be little reason for having a higher nonwaterfowl feather tolerance for waterfowl feather products than for down products. The Commission therefore requests additional public comment regarding the appropriate limit on nonwaterfowl feathers in waterfowl feather products.

B. Section 253.8—Damaged Feathers

Section 253.8 ''Damaged feathers'' provides that an industry product should not contain damaged feathers—feathers that have been broken, damaged by insects, or otherwise materially injured—in excess of 2% of the total weight of the filling material, unless the product is labeled as containing damaged feathers. Products identified as ''down'' pursuant to the Guides may contain up to 20% non-down plumage; therefore, the 2% maximum undisclosed damaged feathers will comprise 10% of that non-down plumage. In contrast, products filled entirely with feathers may not contain undisclosed damaged feathers exceeding 2% of the feather filling.

Five commenters addressed this apparent anomaly, urging that the Guides be revised to substitute a ''percentage of the total weight of the feather content'' for the current ''2% of total fill weight'' standard.[26] According to the commenters, the current standard reflects the Guides' focus on predominantly down filled products. Only more recently, they contend, have predominantly feather filled products proliferated. Further, a ''percentage of the feather filling'' standard, according to industry members, will better reflect reasonable and uncontrollable damage to feathers that occurs naturally as a result of preening and pecking by the birds and subsequent commercial processing of the fill.[27]

Because the current standard appears overly restrictive when applied to feather products, the Commission has preliminarily determined to amend it. However, because four commenters suggested a 10% [28] limit, and the Commission recently received a report of tests conducted by members of the International Down and Feather Bureau suggesting that a 7% limit is appropriate,[29] the Commission requests additional comment regarding the appropriate limit on damaged feathers.

C. Section 253.6—Tolerances in Filling Material

The Commission is considering the modification of certain tolerances in Section 253.6 ''Tolerances in filling material.'' There may be a misunderstanding regarding the purpose and use of the Guides' tolerances for feather and down percentage claims. The Guides' tolerances are intended to accommodate the imprecise nature of processing and manufacturing non-homogeneous feather and down products. Further, as stated in Section 253.6(f) of the Guides, ''[t]he tolerances set forth in this section are not to be construed to permit intentional adulteration.'' When the Guides were promulgated, the industry stated it was nearly impossible to manufacture 100% down products; the Guides therefore permitted a 30% tolerance for products advertised or labeled as ''down,'' i.e., products with a minimum of 70% down and plumules may be advertised or labeled as ''down'' without additional disclosures regarding the actual percentages of the content.

It appears, however, that an increased minimum requirement of 75% down and plumules currently may be practicable for the FTC Guides. A 75% down and plumules standard is embodied in the laws of Canada, a U.S. partner in the North American Free Trade Agreement. Adopting a 75% standard might benefit consumers by achieving greater legal uniformity between the U.S. Guides and Canadian laws. At the same time, the extent of these benefits is difficult to quantify, and some industry members have stated that the benefits would be insubstantial and the costs—in dollars and consumer confusion—would be great. Several of the questions below are intended to gather information that would facilitate analysis of the costs and benefits of increasing the ''down'' standard to 75% down and plumules.

In addition, over the years, the 30% tolerance has been applied to feather and down products advertised or labeled as blends, even though evidence suggests that the down industry can produce most blends of feather and down products to ±5 percentage points of the actual, labeled percentage. For example, although the industry may be capable of filling a blended product labeled ''50% down/50% waterfowl feathers'' with feathers and down equal to 45–55% down and 45–55% waterfowl feathers, industry members apply the Guides' 30% tolerance to produce a product that actually consists of 35% down, 5% down fiber, and 60% other plumage. It appears that the industry has interpreted the tolerance to allow it to aim for the tolerance rather than to attempt to fill the product with the actual labeled amount of plumage.

Finally, the Commission is concerned that with the current disclosures, consumers may not understand how much down is in the products, and may be hampered in their ability to evaluate price, value, and quality. The Commission is therefore considering the following options: (1) Tightening the tolerance for blended products so that the tolerance reflects the true manufacturing abilities of the industry; (2) clarifying that the tolerance in the

[23] UF&D Comment at 1.

[24] Pacific Coast Feather Comment at 1.

[25] ADA Comment at 2; Pillowtex Comment at 3.

[26] Down Lite Comment at 2; Pacific Coast Feather Comment at 1; UF&D Comment at 1; ADA Comment at 1.

[27] Id.

[28] Id.

[29] Letter from Wilford K. Lieber, President, IDFTL (May 8, 1996).

Guides is intended to accommodate manufacturing difficulties and that the intentional practice of aiming for the minimum tolerance level will not be condoned; and (3) requiring point-of-sale (e.g., in catalogs and on product labels) disclosure of actual down content—for example, ''Down—consisting of not less than 70% down and plumules.'' The Commission seeks comment on these options.

V. Questions

1. The Commission is considering the reduction of landfowl feathers in waterfowl feather products to match the 2% tolerance of landfowl feathers for down products. Can manufacturers meet a 2% tolerance of landfowl feathers for waterfowl feather products? If not, explain why the tolerance for landfowl feathers should be higher in waterfowl feather products than in down products.

2. The Commission is considering an increase in the permissible amount of undisclosed damaged feathers. What is the appropriate limit on damaged feathers (7%, 10%, or some other percentage)?

3. Do the Guides continue to be useful or relevant in today's down industry? If yes, discuss and provide examples of the usefulness or relevance of the Guides.

4. Are there widely accepted standards that accurately measure the warmth of feather and down products, e.g., fill power, warmth factor rating similar to R-Value, or other standards? Should the Commission consider adopting Guides that set forth standards to measure the warmth of feather and down products?

5. How do consumers interpret claims about fill power or warmth factor ratings? Is fill power or a warmth factor rating a better indicator of warmth, durability, or comfort than the percentage or amount of down? Are fill power or warmth factor claims becoming more important than percentage down claims? What would be the costs and benefits of adopting fill power or warmth factor standards?

6. What would be the costs and benefits of adopting the fill power standards used in Japan? Should the Commission adopt the fill power test method(s) used in Japan or any other nation?

7. What are the costs and benefits of:

a. Requiring point-of-sale disclosure (i.e., in mail order catalogs and on visible product labels) of actual down and plumules content in the form ''Down—consisting of not less than 70% down and plumules''; and/or

b. Tightening the tolerance for blends of feathers and down by requiring that the actual percentage of feathers or down found in the product be ±5% of the advertised or labeled content?

8. Since the Guides were issued, what effects, if any, have changes in relevant technology or economic conditions had on:

a. The Guides;

b. The costs and ability of manufacturers to fill products labeled as ''down'' with the minimum of 70% down and plumules; and

c. The costs and ability of manufacturers to fill blended products with the labeled percentages of down and feathers; e.g., if the product is labeled ''50% down/50% waterfowl feathers'', are manufacturers able to fill the product with actual 50% down and plumules?

9. Because products containing a minimum of 70% down and plumules may be identified as ''down,'' is there any incentive to manufacture products that contain more than 70% down and plumules? If products that contain more than 70% down and plumules are produced, how are such products marketed to distinguish them from ''down'' products that contain the minimum 70% down and plumules? Provide any information to show consumer interest or disinterest in purchasing products that contain more than 70% down and plumules.

10. What would be the costs and benefits to (a) industry and (b) consumers if the Commission were to increase from 70% to 75% the minimum down and plumules required for products to be advertised or labeled with the term ''down''?

11. Canadian regulations require a minimum of 75% down and plumules in products that are labeled ''down.'' Does maintaining the current U.S. minimum standard of 70% down and plumules for products that are advertised or labeled ''down'' impair the U.S. industry's ability to efficiently export products to Canada?

List of Subjects in 16 CFR Part 253

Advertising, Labeling, Filling material, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–27572 Filed 10–25–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37850; File No. S7–27–96]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment amendments to the broker-dealer books and records rules. The proposed amendments clarify, modify, and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specify certain types of books and records that broker-dealers must make available in their local offices. The Commission is proposing amendments to the books and records rules in response to certain concerns raised by members of the North American Securities Administrators Association (''NASAA''). The proposed amendments are intended to obligate broker-dealers to make and retain certain additional records that would be valuable to state regulators during examination and enforcement proceedings.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–96. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 942–0131; Peter R. Geraghty, (202) 942–0177; or Matthew G. McGuire, (202) 942–7103; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 17(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission ''as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of'' the Exchange Act.[1] Rules 17a-3 and 17a-4 under the Exchange Act specify minimum requirements with respect to the records that must be made by broker-dealers as well as the periods during which such records and other documents relating to the broker-dealer's business must be preserved.[2]

In 1993, a NASAA Committee (''NASAA Committee'') commenced work on a model state regulation to supplement the books and records requirements set forth in Rules 17a-3 and 17a-4. The NASAA Committee observed that the existing Commission books and records requirements do not obligate broker-dealers to make and retain certain types of records that would be valuable to state regulators during examination and enforcement proceedings. In addition, the NASAA Committee noted that several states had commenced independent efforts to develop supplemental books and records requirements and expressed concern about the potential difficulties that would result if inconsistent books and records requirements emerged from these independent efforts.

The NASAA Committee determined that supplementary rules should be required with respect to purchase and sale documentation, registered representatives, customer investment objectives, customer complaints, exceptional or unusual numerical occurrences, background information on underwritten or recommended securities, communications, contracts and agreements, marketing materials, and licenses. In addition, the NASAA Committee determined that supplemental requirements should specify the types of records that broker-dealers must make available in each of their local offices and should contain requirements obligating broker-dealers to cooperate with inspections and investigations by state regulators. The NASAA Committee released a final draft of its model regulation (''NASAA Model'') in August 1995, which it presented for membership approval at NASAA's October 1995 meeting.

At the October meeting, the Commission Chairman stated that supplemental state books and records requirements would impose a substantial burden on broker-dealers because of the likelihood that each state's requirements would not be consistent with those adopted by other states. The Chairman further noted that modification of the Commission's books and records rules would be a considerably less burdensome means of accomplishing the NASAA members' objectives than would be the development of supplemental state requirements. The NASAA membership thereafter voted to defer taking further action with respect to the NASAA Model in order to give the Commission an opportunity to develop appropriate amendments to its books and records rules.[3]

II. Proposed Amendments and Discussion

In preparing the proposed amendments to Rules 17a-3 and 17a-4, Commission staff members met with the NASAA Committee on several occasions to discuss the specific concerns of state securities regulators. The NASAA Committee advised that state examinations of broker-dealers are frequently hindered by the absence of relevant records in local offices, by long delays in producing required records from a central location, and by poorly organized records. In addition, the NASAA Committee reported that certain provisions of the Commission's current books and records rules have been interpreted differently by broker-dealers, regulators, hearing officers, and courts, and that clarification of the requirements of such provisions would assist regulatory enforcement initiatives. Finally, the NASAA Committee indicated that requiring broker-dealers to maintain certain additional types of books and records would facilitate state regulators' efforts to monitor and control the broker-dealer industry and would increase levels of customer protection.

In general, the proposed amendments to Rule 17a-3 will require broker-dealers to generate local office blotters, to record supplemental information on brokerage order memoranda, to create customer account forms, and to maintain additional records concerning associated persons, customer complaints, and exceptional numerical occurrences. The proposed amendments to Rule 17a-4 will require broker-dealers to preserve certain additional types of records, including advertising and marketing materials, registrations and licenses, audit and examination reports, records concerning recommended securities, and manuals relating to compliance, supervision, and procedures. In addition, the proposed amendments to Rule 17a-4 will clarify and modify the Commission's existing requirements concerning preservation of certain correspondence and contracts. Finally, the proposed amendments to Rule 17a-4 will supplement the existing standards concerning the organization of books and records, will require broker-dealers to designate a principal to be responsible for books and records compliance, and will require broker-dealers to make certain records available in each of their local offices. A discussion of the proposed amendments follows.

A. Blotters and Memoranda

Rule 17a-3(a)(1) specifies the Commission's current requirements concerning records of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. The proposed amendments will add a requirement that records of purchases and sales of securities for customer accounts be accessible with respect to the activities of each local office.

The proposed amendments also specify certain additional information that broker-dealers will be required to include in the memoranda of brokerage orders currently required by Rule 17a-3(a)(6). Existing requirements specify that brokerage memoranda include information concerning the terms and conditions of the order, the account for which the order is entered, the times of entry and execution, and the execution price. The proposed amendments add requirements that each memorandum indicate which associated person entered the order and also indicate whether the order was solicited or unsolicited.

B. Additional Records Concerning Associated Persons

Rule 17a-3(a)(12) currently specifies the types of records that a broker-dealer must maintain with respect to each of its associated persons. In addition to basic background information, the existing rule requires a broker-dealer to maintain records of each associated person's employment and disciplinary history. The proposed amendments will add a new Rule 17a-3(a)(20), which designates several supplementary types of associated person records that a

[1] 15 U.S.C. 78q(a)(1).

[2] 17 CFR 240.17a-3 and 240.17a-4.

[3] The Commission notes that the National Securities Markets Improvement Act of 1996, signed by the President on October 11, 1996, contains a provision that prohibits states from adopting supplement books and records requirements.

broker-dealer must maintain. These new records include registration and licensing materials, agreements between associated persons and the broker-dealer, customer complaint information, and client trading records for each associated person. It is the view of the Commission that many of these supplemental records consist of documents that broker-dealers would routinely keep in the course of operating their businesses. However, the NASAA Committee has indicated that a statutory specification of the precise records that broker-dealers must maintain with respect to associated persons will facilitate inspection and enforcement actions by regulatory authorities.

In addition, proposed Rule 17a-3(a)(21) will add a requirement that broker-dealers maintain a list identifying each of their associated persons and designating the local office where each associated person conducts the greatest portion of his or her business. The NASAA Committee has indicated that state investigations are sometimes delayed because broker-dealers store associated person records in several offices. Proposed Rule 17a-3(a)(21), in conjunction with proposed Rule 17a-4(l)(1), is intended to address this issue. In combination, these rules will require all records concerning each associated person to be stored where such associated person conducts most of his or her business.

C. Account Forms

Proposed Rule 17a-3(a)(16) creates a new Commission requirement that broker-dealers maintain an account form for each customer account. The required account form will include basic identification and background information about a customer, as well as a designation of the customer's investment objective(s) and a specification of the approximate percentage of investment capital that the customer would like to allocate to speculative investments. The associated person responsible for each account and a principal of the broker-dealer must sign or initial each account form to indicate approval of the contents. It is the understanding of the Commission that most broker-dealers currently collect and maintain records of most of the information that they will be required to include on the proposed account forms.

Proposed Rule 17a-3(a)(16) will apply with respect to both new and existing customer accounts. The Commission recognizes that it will be difficult as a practical matter for broker-dealers to prepare the required account forms for existing customers immediately upon adoption of the new rule. Accordingly, the Commission initially proposes a one-year period from the date of adoption of the proposed rule as an appropriate time frame for broker-dealers to comply with respect to existing customer accounts. The Commission is expressly soliciting comments concerning the feasibility of this phase-in period.

Proposed Rule 17a-3(a)(16) also will require that the material contents of a new or changed customer account form be sent to the customer for confirmation. In order to minimize burdens and allow maximum flexibility for broker-dealers who send communications to their customers from a central location, the proposed rule will permit a broker-dealer to send a customer an alternate document containing a copy of the material contents of the account form rather than a copy of the account form itself. In addition, the proposed rule will not require that the signatures or initials of the associated person and principal of the broker-dealer be included on any alternate document sent to a customer for confirmation.

Proposed Rule 17a-3(a)(16) will require a designation on account forms of each customer's investment objective(s) from a list of defined objectives. In instances where a customer designates multiple objectives, one of which includes speculation, the proposed rule will require a specification of the approximate percentage or range of percentages of investment capital to be dedicated to speculation. The proposed amendments do not include a definition of the term ''speculation.'' Accordingly, the Commission is expressly requesting comments concerning whether such a definition should be provided and suggesting possible definitions.

The Commission recognizes that the percentage of speculative investments in a customer's portfolio could change as a result of numerous factors outside of a broker-dealer's control, including changes in the relative market prices of securities, changes in the characterizations of specific securities (e.g., non-speculative to speculative), or changes in a portfolio resulting from customer actions such as adding to or withdrawing funds from the account. Accordingly, broker-dealers might interpret the proposed rule as implying an obligation to monitor all customer accounts for adherence to the designated speculative percentage or might be concerned that the designated speculative percentage provided on the customer account form will serve as dispositive evidence of a broker-dealer's failure to fulfill its suitability obligations if at any time a customer's speculative holdings exceed such percentage.

In response, the Commission notes that the requirements to designate a speculative percentage are not intended to create any monitoring obligation. In addition, while the designated percentage will be useful in assessing the suitability of recommendations made by a broker-dealer, it is only a factor to be considered in determining whether a broker-dealer has fulfilled its suitability obligations to a particular customer.

The Commission recognizes that a customer's financial situation and investment preferences will vary over time. In order to ensure that the required account forms have enduring value as an indicator of customer choices, proposed Rule 17a-3(a)(16) includes a one-year updating requirement with respect to the investment objectives designated on each customer's account form. The Commission is aware of the potential burdens presented by the annual updating requirement. Accordingly, the Commission is expressly soliciting suggestions of less burdensome alternatives that would nevertheless provide broker-dealers and regulators with a reasonably current indication of each customer's investment objectives.

The Commission also recognizes that the nature of the businesses of certain types of broker-dealers may render unnecessary the account form requirements of proposed Rule 17a-3(a)(16). Therefore, the Commission is expressly soliciting suggested standards for the exemption of categories of broker-dealers from the proposed account form requirements.

D. Complaints

Rules 17a-3 and 17a-4 do not currently contain any express requirements concerning oral or written customer complaints that are delivered to a broker-dealer. The proposed amendments add a new Rule 17a-3(a)(17), which will require broker-dealers to maintain files of written materials relating to customer complaints. In addition, proposed Rule 17a-3(a)(17) will require broker-dealers to make and keep written memoranda of oral customer complaints alleging certain types of fraud and theft.

In drafting the Rule 17a-3(a)(17) memoranda requirement, the Commission attempted to respond to the NASAA Committee's view that such memoranda would be of considerable value to state regulators in their efforts to identify particularly problematic registered representatives and broker-

dealer offices. However, in order to avoid unnecessary burdens, the rule does not require a written memorandum where an oral customer complaint is the result of customer misunderstanding or misinterpretation and the complaint is quickly and completely explained or resolved to the customer's satisfaction. This exception to the written memorandum requirement specifies that a customer who makes such an oral complaint must be advised to send a written complaint if the customer remains unsatisfied with the broker-dealer's explanation or has further concerns regarding the matter.

Proposed Rule 17a-3(a)(17) expressly specifies that the requirement to prepare a written memorandum concerning certain oral complaints does not convert the complaint into a reportable event for purposes of Form U–4 or other reporting requirements. In addition, proposed Rule 17a-3(a)(17) requires broker-dealers to provide routine notification in account statements that customers should set their complaints in writing in order to establish an independent record of the complaint. This final requirement is intended to address the NASAA Committee's concern that some broker-dealers have adopted a practice of discouraging their customers from delivering written complaints.

E. Other Required Records

In addition to the records described in the preceding paragraphs, the proposed amendments to Rule 17a-3 will require broker-dealers to create commission and compensation records and activity reports of unusual numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions. The proposed amendments will also modify the definition of ''associated person'' in Rule 17a-3(a)(12)(ii) to codify an existing interpretation of such term.

The proposed amendments will add several new items to the record-preservation requirements of Rule 17a–4.[4] The new types of records include copies of advertisements and marketing materials, information relating to underwritten or recommended securities, registrations and licenses, audit and examination reports, and manuals relating to compliance, supervision, and procedures. Furthermore, the proposed amendments will augment and clarify the existing record maintenance standards set forth in Rule 17a-4(b)(4) with respect to communications and in Rule 17a-4(b)(7) with respect to written agreements.

F. Record Retention Periods

Rules 17a–4(a) and 17a–4(b) currently require broker-dealers to preserve specified types of records for six and three years, respectively. In addition, Rule 17a–4(a) records must be maintained for the first two years in an ''easily accessible place,'' while Rule 17a–4(b) records must be maintained for the first two years in an ''accessible place.''

The NASAA Committee has indicated that the designated record retention periods in Rules 17a–4(a) and 17a–4(b) do not provide clear standards to state regulators concerning record accessibility requirements. In addition, the Commission believes that advances in record-storage technologies and decreased reliance on paper records by broker-dealers have minimized the relevance of the provisions in such rules that vary the accessibility requirements during the designated record retention periods. Accordingly, the proposed amendments modify Rules 17a–4(a) and 17a–4(b) to require broker-dealers to maintain the specified records in an ''easily accessible place'' for the entire retention period. The Commission expressly requests comments concerning any burdens that might be imposed on broker-dealers by this proposed modification.

G. Record Form and Access

The NASAA Committee has advised the Commission that some inspections and investigations of broker-dealers are hindered by delays in producing records or by poorly maintained records. While the Commission is sensitive to the importance of this issue, the Commission and members of the NASAA Committee share the view that obligations to cooperate with inspections and investigations by state securities authorities should be addressed primarily through state regulations rather than through the Commission's books and records rules. Accordingly, the NASAA Committee has prepared a model production and access rule attached as Exhibit A to this document. The model production and access rule sets cooperation standards for broker-dealers and references Rules 17a–3 and 17a–4 with respect to substantive record-keeping requirements. It is our understanding that the NASAA Committee intends to submit this model production and access rule to the NASAA membership for adoption.

The proposed amendments will modify and augment the Commission's current record production and organization requirements set forth in Rule 17a–4(j) in order to make these requirements consistent with correlating provisions in NASAA's proposed model production and access rule. Similarly, the proposed amendments establish a definition for the term ''promptly'' in Rule 17a–4(j) that is consistent with the document production obligations in NASAA's proposed model production and access rule. The definition specifies that requested records must be produced immediately when the records are located in the office where the request is made and within three business days if the requested records are not located in such office.

H. Local Office Access; Designation of Principal

Proposed Rule 17a–4(l) will adopt a new requirement that broker-dealers make available certain records in each of their local offices. This proposed requirement was developed to address the NASAA Committee's concern that storage of records in distant locations can be an impediment to some inspections and investigations. The records that must be available in local offices consist of items that the NASAA Committee believes are essential to conducting effective inspections. Required records include certain blotters of the local office's activities, memoranda of brokerage orders, complaint and correspondence files, associated person records, and customer account forms. In order to accommodate centralized electronic record storage systems used by some broker-dealers and to minimize the overall burden of the local office requirements, proposed Rule 17a–4(l) specifies that the ability to display the necessary records electronically in a local office and immediately produce printed copies will satisfy the rule. The Commission also attempted to minimize the burden of this proposed rule by limiting the local office record availability period to three years. In addition, broker-dealers can comply with the proposed rule's requirements with respect to single-agent offices if the required local office records are made available in certain other offices of the broker-dealer.

Finally, proposed Rule 17a–4(k) will require each broker-dealer to designate a principal for purposes of the books and records rules. The designated principal's responsibilities include indicating approval of records such as outgoing correspondence and marketing materials.

[4] In addition, the proposed amendments include a modification of Rule 17a–4(b)(8) that corrects a typographical error.

III. Request for Comments

The Commission invites interested persons to submit written comments on the proposed amendments. As noted above, the Commission specifically requests comments from broker-dealers on the feasibility of the proposed one-year phase-in period with respect to the account form requirement for existing customers, on possible definitions for the term ''speculation,'' on possible alternatives to the annual account form investment objective updating requirement, on the desirability of exempting certain categories of broker-dealers from the proposed account form requirement, and on the desirability of modifying the record accessibility requirements of Rules 17a–4(a) and 17a–4(b).

IV. Costs and Benefits of the Proposed Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed amendments to Rules 17a–3 and 17a–4, commenters are requested to provide analyses and data relating to costs and benefits associated with any of the proposals herein. The Commission preliminarily believes that compliance burdens presented by the proposed amendments will not be substantial and that the proposed amendments will significantly increase levels of customer protection.

In addition, section 23(a) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against regulatory benefits gained in terms of furthering the purposes of the Exchange Act.[5] The Commission preliminarily has considered the proposed amendments to Rules 17a–3 and 17a–4 in light of the standards cited in section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act, in that any burden imposed would be less than that imposed by individual, and possibly divergent, state regulations. The Commission solicits commenters' views regarding the effects of the proposed rules on competition.

V. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') concerning the proposed amendments. The IRFA notes that the purpose of the proposed amendments is to facilitate the efforts of federal and state agencies in protecting investors and indicates that the Commission believes that the proposed amendments are necessary to ensure that registered broker-dealers keep books and records that are sufficient to permit state and federal regulators to undertake complete operational examinations. The IRFA further indicates that the proposed amendments would affect all broker-dealers, including the approximately 5,250 small broker-dealers, but notes that the requirements of the proposed amendments were designed to minimize additional burdens. The IRFA indicates that the proposed amendments would require broker-dealers to adjust their recordkeeping and reporting practices, to update certain customer information records on an annual basis, and to modify their record storage systems. The IRFA adds that no federal securities laws duplicate, overlap, or conflict with the proposed amendments and states that the Commission does not believe that any less burdensome alternatives are available to accomplish the objectives of the proposed amendments.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Written comments will be considered in preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted. Such comments will be placed in the same public file as that designated for the proposed amendments themselves. A copy of the IRFA may be obtained by contacting Matthew G. McGuire, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 942–7103.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[6] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Proposed Books and Records Amendments.''

A. Collection of Information Under Proposed Books and Records Amendments

The Proposed Books and Records Amendments would require registered broker-dealers to maintain information with respect to purchase and sale documents, customer information, associated person information, customer complaints, and certain other matters.

B. Proposed Use of Information

The information collected pursuant to the Proposed Books and Records Amendments would be used by the Commission, self-regulatory organizations, and representatives of state securities regulatory authorities. No governmental agency or third party would regularly receive any of the information described above. The Commission, self-regulatory organizations, and state securities regulatory authorities would use the records required by the Proposed Books and Records Amendments in examinations and investigations of broker-dealers.

C. Respondents

The Proposed Books and Records Amendments would apply with respect to all of the approximately 8,500 broker-dealers that are currently registered with the Commission. However, most of the provisions of the Proposed Books and Records Amendments would apply only with respect to the approximately 5,300 broker-dealers who do business with the general public.

D. Total Annual Reporting and Recordkeeping Burden

The hour burden of the Proposed Books and Records Amendments would vary widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. Most of the requirements of the Proposed Books and Records Amendments involve collections of information that typical broker-dealers already maintain as customary and usual business practices or in compliance with existing regulations. Accordingly, the additional annual burden created by most of the new requirements of the Proposed Books and Records Amendments will not be substantial.

The Commission believes that the only provision of the Proposed Books and Records Amendments that will present a significant new burden to broker-dealers is the annual account form updating requirement of proposed Rule 17a-3(a)(16). Broker-dealers currently maintain approximately 46,000,000 customer accounts. The Commission estimates that approximately 10% of the customer accounts of a typical broker-dealer will require updating each year and that it

[5] *See* 15 U.S.C. 78w(a)(2).

[6] 44 U.S.C. 3501 *et seq.*

will require approximately five minutes for a typical broker-dealer to update each such customer account. Thus, the Commission estimates that approximately 383,333 hours (five minutes times 4,600,000 updated customer accounts) would be required by the account form updating requirement of proposed Rule 17a-3(a)(16) in each year.

Other than the account form updating requirement, the provisions of the Proposed Books and Records Amendments should create only minimal annual compliance burdens. Variables relating to the recordkeeping practices and levels of customer business of broker-dealers make it difficult to estimate the precise burden of the Proposed Books and Records Amendments. However, based on conversations with members of the securities industry and based on the Commission's experience in this area, the Commission estimates that, in addition to the requirement of updating account forms pursuant to the provisions of proposed Rule 17a-3(a)(16), the Proposed Books and Records Amendments should result in an increase of approximately 2% of the time that a typical broker-dealer spends making records required by Rule 17a-3 and an increase of approximately 2% of the time that a typical broker-dealer spends making records required by Rule 17a-4.

The current estimate of the time required to comply with the existing provisions of Rule 17a-3 is one hour per broker per working day. Thus, the Commission estimates that complying with the proposed amendments to Rule 17a-3 (other than updating account forms pursuant to proposed Rule 17a-3(a)(16)) should require an additional 42,330 hours per year (1.2 minutes per working day times 249 working days times 8,500 broker-dealers). The current estimate of the time required to comply with the existing provisions of Rule 17a-4 is also one hour per broker per working day. Thus, the Commission also estimates that complying with the proposed amendments to Rule 17a-4 should require an additional 42,330 hours per year (1.2 minutes per working day times 249 working days times 8,500 broker-dealers).

In addition to the time necessary to make the required records, the Proposed Books and Records Amendments would also impose burdens on respondents in connection with storing the new types of records and in connection with complying with new record access requirements. Variations in the current record storage systems of respondents make it difficult for the Commission to provide any meaningful estimate of the costs of these burdens to a typical respondent. To the extent that the additional records required by the Proposed Books and Records Amendments can be stored and produced for inspection by electronic means, the additional costs should not be substantial.

Finally, the Proposed Books and Records Amendments will impose burdens on respondents in connection with necessary modifications to their record storage systems. Variations in the current record storage systems of respondents make it difficult for the Commission to provide any meaningful estimate of the costs of these burdens to a typical respondent. However, the Commission notes that such burdens would be one-time expenses rather than recurring costs.

E. General Information about the Collection of Information

The collection of information under the Proposed Books and Records Amendments would be mandatory. The information collected pursuant to Rules 17a-3(a) (17), (19), and (21) would be retained for six years. The information collected pursuant to Rules 17a-3(a)(18), 17a-4(b)(4), (7), (10), and (11), and 17a-4(e)(5) would be retained for three years. The information collected pursuant to Rule 17a-4(a)(16) would be retained for six years following the closing of the related customer's account. The information collected pursuant to Rule 17a-4(d) would be retained for the life of the enterprise or any successor enterprise. The information collected pursuant to Rule 17a-3(a)(20) would be retained for three years following the termination of employment or other connection with the broker-dealer of the related associated person. The information collected pursuant to Rule 17a-4(e)(6) would be retained for three years after the date of the termination of use of such information. In general, the information collected pursuant to the Proposed Books and Records Amendments would be held by the respondent. The Commission, self-regulatory organizations, and state securities regulatory authorities would only gain possession of the information upon request. Any information received by the Commission pursuant to the Proposed Books and Records Amendments would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

F. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

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, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and refer to File No. S7–27–96. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the Federal Register, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VII. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by section 17(a)(1) of the Exchange Act.

List of Subjects in 17 CFR Part 240

Brokers; Reporting and recordkeeping requirements; Securities.

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. 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, 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.

* * * * *

2. Section 240.17a-3 is amended by adding a sentence at the end of paragraph (a)(1), revising paragraph

(a)(6), adding paragraphs (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), and (a)(21), and (f) to read as follows, and removing and reserving paragraph (a)(12)(ii):

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) * * *

(1) * * * The blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities for accounts of customers of such member, broker or dealer shall be maintained so that such records are accessible with respect to the activities of each local office of such member, broker or dealer.

* * * * *

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show: The terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time of entry; the price at which executed, if any; information identifying the associated person who entered the order on behalf of the customer; information identifying whether the transaction was solicited or unsolicited; and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary authority by such member, broker or dealer, or any associated person thereof, shall be so designated. The term *instruction* shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall be deemed to mean the time when such member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

* * * * *

(12) * * *

(ii) [Reserved]

* * * * *

(16) An ''account form'' for every customer account:

(i) Each account form shall be approved by the associated person responsible for such account (who, in the case of a new account, shall be the associated person who opened such account) and a principal of the member, broker or dealer. Approval by the associated person and principal shall be indicated by signature or individual initials and date of signature or initialing on each account form. A member, broker or dealer shall send to each customer, no later than 30 calendar days after the date of the first transaction execution for the account of such customer, a copy of such customer's account form or an alternate document containing all required information set forth on such account form. The account form or alternate document shall include or be accompanied by a prominent statement advising the customer that, if any information on the account form or alternate document is incorrect, the customer should mark any corrections and return the account form or alternate document to the member, broker or dealer. Within 30 days of receipt from a customer of any corrections or changes to the contents of an account form or alternate document, a member, broker or dealer shall send a copy of the revised account form or alternate document to such customer and to the associated person who is responsible for such customer's account.

(ii) Each account form shall contain the following information:

(A) For natural persons, the customer's name, Social Security number (or other identifying tax number), address and telephone number, age, marital status and number of dependents, educational level, employment status including occupation and employer's name, annual income, and net worth (excluding value of primary residence). In the case of a joint account, such information shall be included for each individual on the joint account.

(B) For customers other than natural persons, the name of the entity, its address, telephone number, Internal Revenue Service employer identification number, and the name and telephone number of the individual or individuals at that entity authorized to effect securities transactions in that account.

(C) A designation of the customer's investment objective(s), from a list of objectives that shall include a definition of each category of objective in simple language. If speculation or a similar high-risk objective is among the alternatives presented, such objective must be presented as an independent category on the list of objectives and may not be presented on the list in combination with any other category of objective. Any definition of speculation or a similar high-risk objective shall state that such investments involve a high risk of loss that may exceed the losses in general market averages on any specific day or over a longer period of time. Where a customer designates multiple investment objectives, and one of the objectives is speculation or similar high-risk objective, the approximate percentage or range of percentages of investment capital dedicated to speculation or such similar high-risk objective shall be specified. No investment objective shall be marked or otherwise indicated on an account form unless specified or expressly authorized by the customer. The investment objectives on customer account forms shall be designated upon opening a new account and updated, if required, on an annual basis thereafter.

(iii) The neglect, refusal, or inability of a customer to provide the required information for such customer's account form shall excuse a member, broker or dealer from obtaining such required information, provided that the member, broker or dealer maintains a written memorandum of such customer's neglect, refusal, or inability to provide the required information.

(17)(i) Customer complaint files containing all correspondence, memoranda, and other documents received or generated in connection with any complaint by or on behalf of a customer. Customer complaint files shall also include a record showing what action, if any, has been taken by the member, broker or dealer in response to each complaint. Customer complaint files must be accessible by associated person name and local office location. Each local office shall maintain a customer complaint file that can be sorted by associated person name for all complaints involving that office. Local office customer complaint files shall include, at a minimum, the complaint and the response or resolution, if any.

(ii) Any oral complaint from a customer received by an employee of a member, broker or dealer alleging facts that, if true, would constitute theft, conversion of funds or securities, unauthorized trading, churning, misrepresentation or lack of material disclosure, lack of suitability, or falsification of records, must be noted in a memorandum containing the name and address of the complainant, the customer account number, and the date of the complaint. The memorandum shall be prepared by a branch manager, principal, or compliance department employee of the member, broker or dealer. For purposes of Form U–4 and other reporting requirements, the preparation of such a memorandum shall not convert an oral complaint into a reportable event. It shall not be necessary to prepare a memorandum of an oral complaint in instances where:

(A) The oral complaint is clearly the result of a misunderstanding or misinterpretation by the customer;

(B) The nature of the misunderstanding or misinterpretation

is fully explained to the customer by an employee of the member, broker or dealer; and

(C) The employee who explains the misunderstanding or misinterpretation also advises the customer that, if the customer is not satisfied with the explanation or has further concerns regarding the matter, the customer should send a written complaint to the broker-dealer, and provides the customer with the appropriate address to send such written complaint.

(iii) Every member, broker or dealer shall routinely notify its customers in a prominent notice on its customer account statements that customers should put their complaints in writing in order to establish an independent record of the complaint. Such notice shall also advise customers of the address and telephone number of the office or department of the member, broker or dealer where complaints should be directed.

(iv) Customer complaint files need not include copies of litigation and arbitration documents if these documents are referenced in the customer complaint files and such documents are readily available to representatives of a securities regulatory authority.

(18) Records of all commissions, overrides, and other compensation (including any bonus) identified by each transaction to the extent earned or accrued specifically for that transaction, the person or persons receiving the compensation, the customer account number, the date the transaction occurred, the amount of compensation, and the name of the security involved. To the extent that compensation is based on factors other than remuneration per trade, such as a total production system or bonus system, the member, broker or dealer must be able to demonstrate and to document, upon request, the method by which the compensation paid was earned.

(19) Activity reports to identify exceptional numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions, for management's attention and information. For the purpose of this paragraph (a)(19), the systems and criteria used to generate such activity reports shall be determined by each member, broker or dealer, as long as the system and its parameters are reasonably designed to monitor levels of activity in accounts that may warrant further review and analysis by management. Actual copies of activity reports need not be retained by a member, broker or dealer if the member, broker or dealer maintains through electronic storage the data necessary to create or recreate promptly the required activity reports upon request by representatives of a securities regulatory authority.

(20) The following records with respect to each associated person of such member, broker or dealer:

(i) All registration application forms (Form U–4), termination forms (Form U–5), and amendments, which forms and amendments shall be manually executed, including complete documentation as to any ''yes'' answer pertaining to disciplinary history on Form U–4 (including items reported on a Disclosure Reporting Page).

(ii) All licenses or other documentation showing registration with state securities jurisdictions or self-regulatory organizations.

(iii) All contracts and other records pertaining to the relationship between each associated person and the member, broker or dealer.

(iv) A summary of each associated person's compensation agreement with the member, broker or dealer, including commission schedules and details of any commission overrides.

(v) Copies of all written inquiries and customer complaints concerning each associated person (for purposes of this paragraph (a)(20)(v), a member, broker or dealer shall not be required to include copies of litigation and arbitration documents among the required records so long as such documents are referenced in the records and are readily available for inspection by representatives of a securities regulatory authority).

(vi) Records showing that upon every change in licensing affecting an associated person, such associated person has been notified of such change, including any restrictions or other provisions affecting the associated person's license.

(vii) A client trading record listing all trades in chronological order for all customers of each associated person, including the items specified in paragraph (a)(1) of this section and the total dollar amount of remuneration per trade (if applicable) to the associated person (if remuneration is on other than a per-trade basis, such as on a total production system or a bonus system for each office, the records required by paragraph (a)(18) of this section shall apply in lieu of the requirement to maintain remuneration records on a per trade basis).

(21) A current list identifying any internally assigned number for each associated person and a designation of the local office of the member, broker or dealer where each associated person conducts the greatest percentage of such associated person's business for such member, broker or dealer.

* * * * *

(f) When used in this section:

(1) The term *associated person* shall mean a partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or otherwise soliciting transactions or accounts for such member, broker or dealer.

(2) The term *local office* means any location where an associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or otherwise soliciting transactions or accounts for a member, broker or dealer.

(3) The term *principal* shall mean an individual registered with the National Association of Securities Dealers, Inc. as a principal or branch manager of a member, broker or dealer.

(4) The term *securities regulatory authority* shall mean the Commission, a state securities regulatory agency, or a self-regulatory organization.

3. Section 240.17a-4 is amended by revising paragraphs (a), (b)(1), (b)(4), (b)(7), (c), (d), (e)(1), (j), and the introductory text to paragraph (b)(8), and adding paragraphs (b)(10), (b)(11), (e)(5), (e)(6), (k), (l), and (m) and to read as follows:

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years in an easily accessible place all records required to be made pursuant to § 240.17a-3(a)(1), (2), (3), (5), (17), (19) and (21).

(b) Every such member, broker and dealer shall preserve for a period of not less than three years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (6), (7), (8), (9), (10), and (18).

* * * * *

(4) Originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to its business, and a record that all outgoing communications have been approved by a principal of the member,

broker or dealer. Communications files shall be maintained in each local office with respect to communications sent from or received by that office, but communications sent from or received at a central location of a member, broker or dealer may be maintained at such central location. Records of principal approval of the outgoing communications of a member, broker or dealer may be kept at a central record storage location rather than at each local office. Correspondence sent with identical text, including any handwritten notes, to two or more customers may be recorded by one copy and a list of recipients. All communications pertaining to a specific customer account that are sent from or received at any local office of a member, broker or dealer shall be preserved with all other communications pertaining to that customer account that have been sent from or received at the same local office.

* * * * *

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to his business as such, including agreements with respect to any account. Written agreements for purposes of this paragraph (b)(7) shall include all written contracts, options agreements, margin agreements, and discretionary trading agreements between the customer and the member, broker or dealer. The customer shall receive a copy of every written contract or agreement between the customer and the member, broker or dealer.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X–17A–5 (§ 249.617 of this chapter) Part II or Part IIA and in annual audited financial statements required by § 240.17a-5(d).

* * * * *

(10) All advertisements, marketing materials, sales scripts, and other paper or electronic records, including audio and video tapes, used by the member, broker or dealer or any associated person to offer or sell any security. This provision includes documents and other records that are intended exclusively for internal use. All documents and other records used by the member, broker or dealer or any associated person to offer or sell any security shall be approved by a principal, a record of whose approval must be maintained.

(11) Any information relating to the basis for any recommendation of a security by the member, broker or dealer with respect to each security that is underwritten by the member, broker or dealer and each security that the member, broker or dealer trades as principal and recommends to its customers. The requirement of this paragraph (b)(11) shall not be deemed to supersede the requirements of § 240.15c2–11 with respect to any securities for which a member, broker or dealer publishes quotations or submits such quotations for publication.

(c) Every such member, broker and dealer shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records that relate to the terms and conditions with respect to the opening and maintenance of such account and any account forms required by § 240.17a-3(a)(16).

(d) Every such member, broker and dealer shall preserve during the life of the enterprise and of any successor enterprise all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), and amendments to such Forms, which Forms and amendments shall be manually executed, all licenses or other documentation showing registration with state securities jurisdictions and self-regulatory organizations, and all organizational documents of the member, broker or dealer.

(e) * * *

(1) All records required under paragraphs (a)(12) and (a)(20) of § 240.17a-3 until at least three years after the ''associated person'' has terminated his employment and any other connection with the member, broker or dealer.

* * * * *

(5) All audit or examination reports that are required by law or that are completed by a party other than the member, broker or dealer for at least three years after the date of each such audit or examination report.

(6) Compliance, supervisory, and procedures manuals describing the policies and practices of the member, broker or dealer with respect to operations, compliance with all applicable securities laws and regulations, and supervision of the activities of each natural person associated with the member, broker or dealer until at least three years after the termination of use of each such manual. Such manuals that pertain to the operation of a local office shall be kept at that office.

* * * * *

(j)(1) Every member, broker or dealer subject to this section shall furnish promptly to representatives of a securities regulatory authority such authentic, accurate, legible, complete, and current (where a record requires updating) copies of those records of the member, broker or dealer that are required to be preserved under this section, as are requested by such representative of a securities regulatory authority. Records shall be organized in a systematic and easily recognizable order, such as chronologically or alphabetically. Each member, broker or dealer shall without delay make available to representatives of a securities regulatory authority an individual who is familiar with the records (or type of records) and qualified to explain them.

(2) For purposes of this section, the term *promptly* shall mean immediately when the requested records are located in the office of the member, broker or dealer where the request for such records is made. In the case of requested records that are not located in the office of the member, broker or dealer where the request for such records is made, the term *promptly* shall mean within three business days.

(k) Every member, broker or dealer shall designate a principal to ensure compliance with the provisions of this section and § 240.17a-3 that require approval of a record by a principal. Copies of documents provided to customers pursuant to the requirements of this section and § 240.17a-3 need not show the approval of a principal.

(l)(1) Records required to be preserved by the provisions of this section must be maintained at the headquarters office of a member, broker or dealer. The following records must be maintained for a period of at least three years also at each local office of a member, broker or dealer for such local office's activity: the blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities for any accounts of customers required by § 240.17a-3(a)(1); the memoranda required by § 240.17a-3(a)(6); with respect to each associated person who conducts the greatest percentage of such associated person's business for such member, broker or dealer at such local office, all of the records required by §§ 240.17a-3(a)(12) and 240.17a-3(a)(20) (except that records reflecting the amount of remuneration per trade required by § 240.17a-3(a)(20)(vii) may be kept at a central location with the other records of the member, broker or dealer instead of at each local office); a copy of the list required by § 240.17a-3(a)(21); all account forms, including any updated versions, required by § 240.17a-3(a)(16); all local office customer complaint files required by § 240.17a-3(a)(17) and all

local office communications required by paragraph (b)(4) of this section; and all local office compliance, supervisory, and procedures manuals required by paragraph (e)(6) of this section.

(2) The capability of electronically displaying and immediately producing printed copies of the local office records described herein in a local office will be deemed to comply with the local office record maintenance requirements of this section. This capability shall not be deemed to supersede paragraph (f) of this section.

(3) With respect to a single-agent office of a member, broker or dealer, local office records may be aggregated with the records of one or more other such offices in a regional record depository if the following requirements are met:

(i) The regional record depository, which may be another office of the member, broker or dealer, is located within the same state as the single-agent office.

(ii) The records stored in the regional record depository can be easily disaggregated and accessed for the single-agent office to the same extent as if the single-agent office kept separate records in compliance with the local office record-keeping requirements of this section.

(m) When used in this section:

(1) The term *associated person* shall have the meaning set forth in § 240.17a-3(f)(1).

(2) The term *local office* shall have the meaning set forth in § 240.17a-3(f)(2).

(3) The term *principal* shall have the meaning set forth in § 240.17a-3(f)(3).

(4) The term *securities regulatory authority* shall have the meaning set forth in § 240.17a-3(f)(4).

Dated: October 22, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

(Note: This Exhibit will not appear in the Code of Federal Regulations)

Model State Regulation Governing Access to Records Required To Be Kept By Broker-Dealers (Prepared by NASAA)

I. *Required Books and Records.*

Every broker-dealer registered in this State shall comply with the record-keeping requirements of 17 CFR 240.17a-3 (hereinafter ''Rule 17a-3'') and 17 CFR 240.17a-4 (hereinafter ''Rule 17a-4''), promulgated under the Securities Exchange Act of 1934.

II. *Access to Records.*

(a) *Duty to produce.*

All records required to be maintained shall be kept within the possession and control of the broker-dealer, except as permitted in section (e) below with respect to a broker-dealer that has ceased transacting business in securities or that has terminated its registration. All records within the possession or control of a broker-dealer shall be produced to [the Administrator] or [the Administrator's] designee upon request. Every broker-dealer shall ensure that each office makes available to [the Administrator] or [the Administrator's] designee all local office records required by Rules 17a-3 and 17a-4.

(b) *Time in which to produce.*

It is the responsibility of each broker-dealer to make all required records quickly and easily accessible. Whenever records are required to be produced by this rule, the time limits set forth in this subparagraph shall control. When requested records are present on the premises of a broker-dealer, including paper records in a local office and electronic records retrievable over a computer terminal, they shall be produced immediately. When requested records are not present on the premises, such as microfilm in a central storage location outside this State, they shall be produced no later than the third business day after the date of the request. For good cause shown in writing, such as the unusually large scope of a request requiring production of a large volume of records, [the Administrator] may extend the time period for production.

(c) *Forms of record retention; duty to organize.*

Every broker-dealer shall ensure that all records required to be maintained shall be organized and made available for examination in one of the forms specified in Rules 17a-3 and 17a-4. Such records shall be authentic, accurate, legible, complete, and current (where a record requires updating). They shall be organized in a systematic and easily recognized order, such as chronologically or alphabetically, and they shall be easily accessible and readily explained. Each broker-dealer shall without delay make available to [the Administrator] or [the Administrator's] designee an individual who is familiar with the records (or type of records) and qualified to explain them. In the case of any records that require equipment to allow review or copying, the broker-dealer shall immediately make available such equipment in working order to the office that has responsibility to maintain the records.

(d) *Duty to cooperate.*

Every broker-dealer and broker-dealer employee shall cooperate with efforts by the [the Administrator] or [the Administrator's] designee to review for compliance with this regulation. [The Administrator] or [the Administrator's] designee may conduct announced or unannounced examinations at any office within or outside this State to review the business activities of the broker-dealer. Every broker-dealer shall furnish access to all areas of its securities operations conducted on or off the premises and otherwise facilitate the examination. [The Administrator] or [the Administrator's] designee may further require that any records subject to examination by submitted [the Administrator's] agency to determine compliance with applicable laws and regulations.

(e) *Miscellaneous records.*

Every broker-dealer shall make available for examination all records in its possession or control that are in any way related to its business or that may lead to evidence pertaining to its business regardless of whether or not routine maintenance of such records is required by this regulation or Rules 17a-3 and 17a-4. Such records which are not in the immediate possession of the broker-dealer but which the broker-dealer has the ability to obtain must be obtained and produced [the Administrator] or [the Administrator's] designee on request, unless such records are equally available to [the Administrator].

(f) *Privileged records.*

If, in response to a request for records by [the Administrator] or [the Administrator's] designee during an examination or investigation, a broker-dealer refuses to produce any record on a claim of privilege, each such document must be identified in detail and the specific privilege identified an to each item. An assertion of privilege does not excuse a broker-dealer from maintaining records.

(g) *Records retention time periods; control by other parties.*

All records required by this rule shall be maintained for the time periods specified in the applicable provisions of Rules 17a-3 and 17a-4. Should a broker-dealer cease transacting business in securities to terminate its registration, the broker-dealer shall continue to maintain the records for the time period specified in Rules 17a-3 and 17a-4. Should a terminated broker-dealer have another party maintain control of the broker-dealer's records, notice shall include the reason for the arrangement and the name, address, and telephone number of the other party.

(h) *Waiver of requirements.*

[The Administrator] may, for good cause as determined in [the Administrator] discretion, waive any requirements in this regulation with respect to any requirements in this regulation with respect any broker-dealer or class of broker-dealers.

[FR Doc. 96–27611 Filed 10–25–96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 314, and 600

[Docket No. 96N–0108]

Postmarketing Expedited Adverse Experience Reporting for Human Drug and Licensed Biological Products; Increased Frequency Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to

amend its postmarketing expedited adverse experience reporting regulations to revoke the requirement for increased frequency reports for human drug and licensed biological products as expedited reports. This action, which is part of the President's regulatory reinvention initiative, is based on FDA's determination that increased frequency reports, as currently required, have not contributed to timely identification of safety problems requiring regulatory action and are no longer necessary for FDA surveillance of postmarketing adverse experiences. This action would simplify and streamline postmarketing expedited reporting of adverse experiences for human drug and licensed biological products.

DATES: Written comments by January 13, 1997. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995, President Clinton issued a memorandum titled ''Regulatory Reinvention Initiative.'' This memorandum, part of the reform of the Federal regulatory system, directed heads of departments and agencies to undertake a page-by-page review of their existing regulations and to eliminate or modify those that are outdated or otherwise in need of reform. The President's directive was issued because private businesses, especially small ones, often face a profusion of overlapping and sometimes conflicting rules from Federal regulatory objectives.

As part of their review, agencies were charged to consider the following issues carefully: Is the regulation obsolete; could its intended goal be achieved in more efficient, less intrusive ways; are there private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulations; could private business, setting its own standards and being subject to public accountability, do the job as well; and could the States or local governments do the job, making the Federal regulation unnecessary.

In response to the President's regulatory reinvention initiative, FDA conducted a comprehensive review of its existing regulations and identified regulations to eliminate or modify. Although this proposal was not a result of the initial review of regulations, FDA is continuing its efforts to carry out the President's program. The current proposal to revoke parts of its regulations in §§ 310.305, 314.80, and 600.80 (21 CFR 310.305, 314.80, and 600.80) that require postmarketing expedited increased frequency reports of adverse experiences for human drug and licensed biological products is part of the continuing effort.

II. Background

In the Federal Register of February 22, 1985 (50 FR 7452), FDA published revised regulations governing the approval for marketing of new drugs for human use, which included revisions to its adverse experience reporting requirements. Under § 314.80(c)(1)(ii), any applicant with an approved new drug application (NDA) is required to submit expedited increased frequency reports for any significant increase in frequency of an adverse experience that is both serious and expected. In the Federal Register of July 3, 1986 (51 FR 24476), FDA published regulations for adverse experience reporting for marketed prescription drugs without approved NDA's or abbreviated new drug applications (ANDA's). Under § 310.305(c)(4), any manufacturer, packer, or distributor of a marketed prescription drug without an approved NDA or ANDA is required to submit expedited increased frequency reports for any significant increase in frequency of an adverse experience that is both serious and expected. In the Federal Register of April 28, 1992 (57 FR 17950), FDA published regulations for ANDA's, including requirements for adverse experience reporting for drugs with approved ANDA's and abbreviated antibiotic drug applications (AADA's). Under § 314.98 (21 CFR 314.98), any applicant with an approved ANDA or AADA is required to comply with the requirements of § 314.80 regarding the reporting and recordkeeping of adverse experiences. In the Federal Register of October 27, 1994 (59 FR 54034), FDA finalized regulations for adverse experience reporting for licensed biological products. Under § 600.80(c)(1)(ii), manufacturers of licensed biological products are required to submit expedited increased frequency reports for any significant increase in frequency of an adverse experience that is both serious and expected.

Under §§ 310.305(c)(4), 314.80(c)(1)(ii) and (c)(1)(iii), and 600.80(c)(1)(ii) and (c)(1)(iii), applicants and manufacturers, packers, and distributors, including licensed manufacturers, are required to review periodically (at least as often as the periodic reporting cycle) the frequency of reports of adverse experiences that are both serious and expected and reports of therapeutic failure (lack of effect), regardless of source, and report any significant increase in frequency as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. For drugs with an approved NDA or ANDA, or licensed biological products, the reporting interval is quarterly in the first 3 years of marketing and annually thereafter (§§ 314.80(c)(2) and 600.80(c)(2)), while for marketed prescription drugs without an approved NDA or ANDA, the reporting interval is annually (§ 310.305(c)(4)). Operationally, an increased frequency exists if the adjusted reporting for the reporting interval is at least two times greater than the adjusted reporting for the comparison interval (previous reporting interval). Reporting is adjusted by the ratio of estimated drug use for the reporting interval to that of the comparison interval. If the number of reports received during the reporting interval is less than four, an increased frequency report is not required (see CDER's ''Guideline for Postmarketing Reporting of Adverse Drug Experiences,'' March 1992 and/or CBER's ''Guideline for Adverse Experience Reporting for Licensed Biological Products,'' October 1993).

These regulations are intended to ensure that applicants and manufacturers, packers, and distributors, including licensed manufacturers, identify increases in the incidence of serious, labeled adverse experiences that occur with changes in medical practice, such as using a drug or biological product in higher risk populations, at higher dosages, or concomitantly with other drugs or biological products causing interactions. FDA intended for these reports to detect increasing incidences of serious, labeled adverse experiences that were not anticipated from premarketing clinical trials and that would necessitate labeling changes or other regulatory actions.

FDA is proposing to amend its postmarketing expedited adverse experience reporting regulations by revoking the requirement for expedited increased frequency reports in §§ 310.305(c)(4), 314.80(c)(1)(ii), and 600.80(c)(1)(ii). This action would not

affect the requirement for expedited reporting of all serious, unexpected adverse experiences. Applicants and manufacturers, packers, and distributors, including licensed manufacturers, must continue to submit 15-day alert reports and followup reports for serious, unexpected events, as required under §§ 310.305(c), 314.80(c), 314.98, and 600.80(c). FDA is also proposing to revoke the definition of ''increased frequency'' in §§ 310.305(b)(5), 314.80(a), and 600.80(a). This term is defined as an increase in the rate of occurrence of a particular adverse drug (or biological product) experience, e.g., an increased number of reports of a particular adverse drug (or biological product) experience after appropriate adjustment for drug (or biological product) exposure.

In the Federal Register of October 27, 1994 (59 FR 54046), FDA proposed to amend, among other things, its regulations for periodic postmarketing reporting of adverse experiences for human drug and licensed biological products in §§ 314.80(c)(2) and 600.80(c)(2). FDA proposed to amend the requirements for the content of periodic adverse experience reports by adding a section for overall safety evaluation. This section would contain a critical analysis and full discussion of the safety information provided in the periodic report as it pertains to a number of matters, including increased frequencies of known toxicity. FDA based this proposed revision on recommendations developed by the World Health Organization's Council for International Organizations of Medical Sciences (CIOMS) Working Group II. Recently, the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) developed, based on the CIOMS II proposals, a draft guideline for periodic reporting entitled ''Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs'' (the ICH E2C guideline). The ICH E2C draft guideline, published in the Federal Register of April 5, 1996 (61 FR 15352), recommends that the overall safety evaluation section of periodic safety update reports highlight any new information on increased frequencies of known adverse drug reactions, including comments on whether it is believed that these data reflect a meaningful change in adverse drug reaction occurrences. Thus, under this guideline, regulatory authorities would be able to obtain reports of increased frequencies from periodic reports. FDA plans to finalize its proposed amendments to the periodic postmarketing safety reporting regulations after consensus is reached by ICH on a final guideline on postmarketing periodic safety update reports.

III. FDA's Experience With Increased Frequency Reports

FDA has found that increased frequency reports have rarely prompted regulatory action during the time that the agency has been receiving such reports. These reports have been of little value in identifying increased incidences of serious, labeled experiences.

From January 1, 1987, to May 31, 1995, FDA received approximately 1,800 increased frequency reports. Over this period, FDA identified only a small number of drug/biological product safety problems where increased frequency reports played a role in risk assessment that resulted in regulatory action, three examples of which are given below. For each of the examples, the safety problems may have been detected in other safety reports required by FDA such as periodic adverse experience reports, field alert reports, or annual reports.

One safety problem involved buprenorphine, a narcotic agonist-antagonist analgesic approved in 1985 and labeled at that time as causing less respiratory depression than morphine. In 1986, FDA received an increased frequency report for respiratory depression with buprenorphine, prompting careful monitoring. This resulted in labeling changes and warnings that buprenorphine may depress respiration in a manner equivalent to an equianalgesic dose of morphine.

A second safety problem involved an increased frequency report of neurotoxicity caused by a medication administration error when vincristine, an antineoplastic, was mistaken for methotrexate, another antineoplastic, and administered intrathecally. This resulted in the repackaging of vincristine to avoid confusion with methotrexate.

A third safety problem involved Orthoclone OKT3, a monoclonal antibody used as an immunosuppressant for treatment of acute allograft rejection in renal, cardiac, and hepatic transplant patients. In 1990, FDA received an increased frequency report for anaphylaxis and serum sickness associated with Orthoclone OKT3. Two of three anaphylaxis patients were undergoing second courses of therapy. This report resulted in labeling amendments including the addition of a boxed warning on the risk of anaphylaxis after any dose and a boldface paragraph providing further details.

FDA has also received increased frequency reports for adverse experiences that were previously identified as potential problems in premarketing clinical trials. For example, based on FDA's review of NDA data on ketorolac, an analgesic, the agency was aware of its potential for causing upper gastrointestinal bleeding (UGIB) and renal failure when given at higher doses. Following approval in 1989, the sponsor was asked to conduct a postmarketing safety study. Meanwhile, in 1992, FDA received increased frequency reports for UGIB and renal failure. However, a causal relationship between these adverse experiences and ketorolac could not be established from the increased frequency reports because of uncertainties caused by the underlying illness, concomitant drug administration, and the indication (postsurgical analgesia) for which ketorolac was being used. Following a review of the postmarketing safety study, FDA required labeling changes to address the safety problems associated with ketorolac. Thus, the increased frequency reports did not contribute to the risk assessment that resulted in this regulatory action.

FDA has found that expedited postmarketing adverse experience reporting systems are best used to identify rare, unexpected adverse drug reactions such as aplastic anemia, hepatic necrosis, renal failure, or anaphylaxis that were not detected in preclinical studies or clinical trials during drug development. For such unexpected reactions, warnings can be added to the labeling without quantifying the incidence of the reaction. Warnings for expected adverse reactions (such as those obtained in increased frequency reports) are already in the labeling. In addition, risk information regarding incidence cannot generally be ascertained from an increased frequency report but requires controlled studies.

IV. Limitations of Increased Frequency Reports

Increased frequency information is derived from incidence rates. An incidence rate is estimated by dividing the number of adverse experiences (numerator) by the number of persons exposed to a drug or biological product (denominator). For increased frequency reports, applicants and manufacturers, including licensed manufacturers,

compare incidence rates estimated for the reporting interval with rates estimated for the previous reporting interval.

FDA is aware of several factors that affect the accuracy of incidence rates. First, health care providers do not report all adverse experiences. The percentage of adverse experiences reported is unknown and varies unpredictably over time. Hence, the numerator cannot be reliably estimated. Second, the number of persons exposed to a drug or biological product during a reporting period is not precisely known; it is estimated from sales or production data. The lag time between production or sales by the manufacturer and consumption by patients can vary, thus adding further distortion to comparisons between reporting periods. Hence, the denominator is not always reliably estimated. Third, adverse experience reports may be used for calculating increased frequencies even though the suspect drug or biological product did not necessarily cause the adverse experience. Assessment of causality is frequently limited by incomplete data and uncertainty caused by the underlying illness, indication, or other drug exposures. Fourth, increased frequency calculations are based on the dates when adverse experience reports are received by the sponsor. If health care providers hold adverse experience reports and submit them all at one time, there can be a cluster of adverse experiences that fall into one reporting period creating a false-positive signal.

Thus, the reliability of increased frequency reports is limited because of the difficulty in accurately estimating incidence rates. FDA has concluded that these concerns make it difficult to rely on increased frequency reports as a tool for identifying important safety problems requiring labeling changes or other regulatory action.

V. Public Comments on Increased Frequency Report Requirements

In the October 27, 1994, proposed rule, FDA proposed to amend its regulations for expedited and periodic premarketing and postmarketing safety reporting of adverse experiences for human drug and biological products. The proposal included revisions to the postmarketing increased frequency report requirements under §§ 310.305, 314.80, and 600.80. FDA proposed to amend these requirements by altering the time period for submitting increased frequency reports from 15 working days to 15 calendar days, and by revising the reporting interval. Under proposed § 310.305, this interval would be increased from at least once a year to at least twice a year, and, under proposed §§ 314.80 and 600.80, this interval would be revised from at least quarterly for the first 3 years of marketing and annually thereafter to at least twice a year. FDA did not receive any comments on these proposed increased frequency reporting revisions.

However, FDA received comments from 12 pharmaceutical companies and 1 individual regarding other aspects of the current increased frequency reporting requirements that were not within the scope of the October 27, 1994, proposal. FDA considered these comments in developing the current proposal.

Nine comments opposed the requirement for increased frequency reports. One comment stated that there is ''common agreement'' that increased frequency assessments have not provided information on significant safety risks to patients. Another comment stated that it was not aware of any important safety signal that had been identified by an increased frequency report. One comment stated that there is no benefit to be gained from increased frequency assessments, especially for drugs that are not the subject of an approved application. Another comment noted that applicants have available other mechanisms to identify and characterize changes in the nature and frequency of adverse experiences reported to them. Another comment noted that no provision exists for increased frequency calculations in the recommendations of either ICH or CIOMS. Three comments recommended that FDA revoke the requirement unless the agency can show that these reports have produced safety information not otherwise obtainable (for example, important labeling revisions or the initiation of other communication to enhance the safe and effective use of drugs).

One comment opposed increased frequency reports of therapeutic failure for over-the-counter (OTC) drugs subject to an approved application. The comment contended that such reports are generally not unexpected from consumers of OTC drugs and are unlikely to involve serious outcomes. The comment requested that FDA limit these reports to prescription drugs and to cases involving serious consequences. Another comment requested that FDA limit increased frequency reports of therapeutic failure to U.S. reports.

One comment requested clarification of the methodology for estimating increased frequency rates because the FDA guideline describing these methods is vague. The comment noted that the ''Guideline for Postmarketing Reporting of Adverse Drug Experiences'' refers to the use of either an arithmetical or statistical method of analysis without specifying either method. The comment said that use of the arithmetic method can produce an increased frequency calculation that would not be replicated by the statistical method (and conversely for the statistical method), thus leading to conflicting interpretations of increased frequency. Another comment requested clarification of the sources of data to be used for increased frequency analyses because of confusion caused by §§ 314.80(d)(1) and 600.80(d)(1), which state that increased frequency reports required under §§ 314.80(c)(1)(ii) and 600.80(c)(1)(ii) apply only to reports found in scientific and medical journals, either as the result of a formal clinical trial or from epidemiological studies or analyses of experience in a monitored series of patients.

VI. Request for Comments

Interested persons may, on or before January 13, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. Environmental Impact

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

VIII. Paperwork Reduction Act of 1995

This proposed rule does not require information collections and, thus, is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

IX. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would simplify and streamline current requirements, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

X. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the Federal Register.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310, 314, and 600 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.305 is amended by revising paragraph (a), by removing paragraph (b)(5), by removing paragraph (c)(4), by redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(4) and (c)(5), respectively, by revising the first sentence of newly redesignated paragraph (c)(4), and by revising paragraph (f)(1) to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

(a) *Scope*. FDA is requiring manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of an approved new drug or abbreviated new drug application to establish and maintain records and make reports to FDA of all serious, unexpected adverse drug experiences associated with the use of their drug products.

* * * * *

(c) * * *

(4) In order to avoid unnecessary duplication in the submission of, and followup to, reports required in this section, a packer's or distributor's obligations may be met by submission of all reports of serious adverse drug experiences to the manufacturer of the drug product. * * *

* * * * *

(f) *Recordkeeping*. (1) Each manufacturer, packer, and distributor shall maintain for a period of 10 years records of all adverse drug experiences required under this section to be reported, including raw data and any correspondence relating to the adverse drug experiences, and the records required to be maintained under paragraph (c)(4) of this section.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

4. Section 314.80 is amended by removing the definition for *Increased frequency* in paragraph (a), by removing paragraph (c)(1)(ii), by redesignating paragraphs (c)(1)(iii) and (c)(1)(iv) as paragraphs (c)(1)(ii) and (c)(1)(iii), respectively, by revising the first two sentences in the introductory text of newly redesignated paragraph (c)(1)(ii), by removing the last sentence in paragraph (d)(1), by revising paragraph (f)(1), and by revising the last sentence in paragraph (l) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

* * * * *

(c) * * *

(1) * * *

(ii) The requirements of paragraph (c)(1)(i) of this section, concerning the submission of 15-day alert reports, shall also apply to any person (other than the applicant) whose name appears on the label of an approved drug product as a manufacturer, packer, or distributor. However, in order to avoid unnecessary duplication in the submission to FDA, and followup to, reports required by paragraph (c)(1)(i) of this section, obligations of a nonapplicant may be met by submission of all reports of serious adverse drug experiences to the applicant.* * *

* * * *

(f) *Reporting Form FDA–1639*. (1) Except as provided in paragraph (f)(3) of this section, the applicant shall complete a Form FDA–1639 (Adverse Reaction Report) for each report of an adverse drug experience.

* * * * *

(l) * * * For purposes of this provision, the term ''applicant'' also includes any person reporting under paragraph (c)(1)(ii) of this section.

* * * * *

PART 600—BIOLOGICAL PRODUCTS: GENERAL

5. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

6. Section 600.80 is amended by removing the definition for *Increased frequency* in paragraph (a), by removing paragraph (c)(1)(ii), by redesignating paragraphs (c)(1)(iii) and (c)(1)(iv) as paragraphs (c)(1)(ii) and (c)(1)(iii), respectively, by revising the first sentence in the introductory text of newly redesignated paragraph (c)(1)(ii), by removing the last sentence in paragraph (d)(1), by revising paragraph (f)(1), and by revising the last sentence in paragraph (m) to read as follows:

§ 600.80 Postmarketing reporting of adverse experiences.

* * * * *

(c) * * *

(1) * * *

(ii) The requirements of paragraph (c)(1)(i) of this section, concerning the submission of 15-day Alert reports, shall also apply to any person other than the licensed manufacturer of the final

product whose name appears on the label of a licensed biological product as a manufacturer, packer, distributer, shared manufacturer, joint manufacturer, or any other participant involved in divided manufacturing.

* * * * *

(f) *Reporting forms.* (1) Except as provided in paragraph (f)(3) of this section, the licensed manufacturer shall complete the reporting form designated by FDA (FDA–3500A, or, for vaccines, a VAERS form) for each report of an adverse experience.

* * * * *

(m) * * * For purposes of this provision, this paragraph also includes any person reporting under paragraph (c)(1)(ii) of this section.

Dated: October 17, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–27593 10–25–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 290

RIN 1010–AC21

Administrative Appeals Process

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes to amend the regulations governing its administrative appeals process. These amendments are in response to MMS's own initiatives to speed up the appeals process, and are in response to statutory requirements recently enacted which require the Department of the Interior to decide certain administrative appeals within 33 months from the commencement of the appeal. Under these proposed regulations, the MMS Director generally would be required to decide an appeal within 16 months of commencement of the appeal or the appeal would automatically be deemed denied. The appellant then could continue its appeal before the Interior Board of Land Appeals (IBLA). The IBLA then would have to complete its action on the appeal before the recently enacted 33-month deadline on deciding appeals involving Federal oil and gas leases. (The 33-month deadline for the IBLA would not apply to appeals involving Indian leases or to Federal leases for minerals other than oil or gas.) In addition, MMS's proposed regulations would impose a new $100.00 filing fee on appeals to the Director.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments should be sent to: Bettine Montgomery, Office of Policy and Management Improvement, Minerals Management Service, 1849 C Street, N.W., MS 4013, Washington, D.C. 20240; courier delivery to Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–3976; fax (202) 208–3118, e-Mail Elizabeth.Montgomery@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Hugh Hilliard, Office of Policy and Management Improvement, U.S. Department of the Interior, Mineral Management Service, 1849 C Street, N.W., Room 4013, Washington, D.C. 20240; telephone (202) 208–3398; fax (202) 208–4891; e-Mail Hugh__Hilliard@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rule is Chris Thomson at (202) 208–7551 in Washington, D.C.

I. Background

In May 1994, MMS began a comprehensive review of its administrative appeals process, particularly as it relates to appeals involving orders or decisions issued by the Royalty Management Program. As part of that review, MMS held several informal meetings with state, tribal, and industry representatives to discuss the problems and possible solutions within the appeals process. The principal problems identified included the length of the appeals process, sometimes taking several years to resolve a case, and the excessive costs of the process to both MMS and appellants. These proposed regulations to amend 30 CFR Part 290 are based in part on ideas developed through that review process. Subsequent to that review, the Royalty Policy Committee (advisory committee to the Secretary of the Interior composed of representatives of states, Indian tribes, industry, other Federal agencies and the general public) established a Subcommittee on Appeals and Alternative Dispute Resolution. MMS expects the Royalty Policy Committee to consider the work of that subcommittee during the pendency of this proposed rule and will consider the recommendations of the Royalty Policy Committee as part of this rulemaking process.

One of the primary ideas developed in the review was that MMS establish both strict time limits on the appeals process and an overall time limitation for appeals as a whole. On August 13, 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. 104–185, 110 Stat. 1700, was enacted. Section 4 of the new Act amended the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1701 *et seq.*, and added a new FOGRMA section 115(h) governing the Department's process for resolving appeals of MMS orders or decisions involving royalties and other payments due on Federal oil and gas leases. For appeals involving Federal oil and gas leases covered by this new provision, the Department has 33 months from the date a proceeding is commenced to complete all levels of administrative review or the appeal will be deemed decided. The 33-month deadline does not apply to appeals involving Indian leases or Federal leases for minerals other than oil and gas.

Therefore, it is necessary that MMS design its administrative appeal process to accommodate the new limitation. Although that limitation does not apply to Indian leases, or to Federal coal or other solid minerals leases, or to orders or decisions signed by the MMS Offshore Minerals Management Program, MMS proposes to apply the same time limit on all appeals to the Director for uniformity of administration.

These regulations propose in § 290.6 that all appeals to the MMS Director will be decided within 16 months of the date the appeal is commenced. The regulations also specify the date on which the Department deems an appeal to have commenced, namely, the date on which MMS receives a notice of appeal, including a statement of the reasons the appellant offers in support of the appeal and a one-page summary of the issues presented in the statement of reasons, and payment of a filing fee. MMS chose a time period shorter than 33 months in order to accelerate the process for all appeals and to provide time for IBLA's further review of MMS decisions. If the 16-month time limitation is reached and a decision has not been issued, then the appeal will automatically be deemed denied by the Director, allowing the appellant to continue its appeal before IBLA.

In addition, the overall 16-month time limitation period for resolving appeals to the MMS Director was derived from an overview of the steps of the appeals process. As noted above, an appeal to the Director of an order or decision issued by a program office of MMS would only ''commence'' with the proper filing of a notice of appeal, including a statement of reasons the appellant offers in support of the appeal

and a one-page summary of the issues presented in the statement of reasons, and a $100.00 filing fee where applicable. Once an appeal has been properly ''commenced,'' i.e., when MMS has received all of the required items, MMS will issue a letter of receipt to the filing party.

An appeal could be filed by any person adversely affected by an MMS order or decision. This would include the person receiving the order or decision or other persons. For example, if the person receiving an MMS order or decision is an operating rights owner on a lease, then the record title owner who also may be liable under the order or decision could appeal. Or, if the person receiving an MMS order or decision is a lessee of an Indian lease and the Indian lessor is adversely affected by the order or decision, then that Indian lessor could appeal. The notice of appeal, as proposed in § 290.2, is a brief letter notifying MMS that the sender is appealing the referenced order or decision. The same MMS office that issued the original order or decision must receive the notice of appeal within 60 days after service of the order or decision upon the recipient.

Under existing regulations in 30 CFR 290.5(b), a notice of appeal is deemed filed on the date it is received by the appropriate MMS office (usually an office in the Royalty Management Program). However, if the notice of appeal is postmarked on or before the due date, and MMS receives it within 10 days of the due date, then it is deemed filed on the due date. With the widespread use of overnight mail, electronic transmissions, and other same-day delivery mechanisms, and for reasons of simplicity and consistency, MMS proposes in § 290.3(d) to eliminate the 10-day grace period for filing the notice of appeal. Thus, under the proposed rule, the notice of appeal would be considered filed on the date the appropriate MMS office receives it. Simply mailing or otherwise transmitting the document would not satisfy the filing requirement. However, MMS is proposing to extend the period for filing the notice of appeal from 30 days to 60 days. No extensions for filing the notice of appeal could be granted under the proposed rule.

The 60-day time period for filing the notice of appeal is jurisdictional, and the Director could not consider an appeal if the notice of appeal is filed late. Therefore, the order or decision would become final, and no further administrative appeal in the Department would be available.

In a change from the current regulations, the appellant would be required under § 290.2(b) to file a written statement of reasons with the notice of appeal explaining the facts and arguments the appellant believes support the appeal. The statement of reasons could be either part of the notice of appeal itself or submitted as a second document within the 60-day time period for filing the notice of appeal. The statement of reasons also would be required to include a one-page summary of the arguments presented in the statement of reasons. In order to encourage statements of reasons that focus clearly on the facts and issues applicable to the appeal, MMS proposes a 20-page limitation on these documents, plus the one-page summary. If the particular situation is unusually complex, however, the appellant may request from the office that issued the order or decision on appeal permission to file a longer statement of reasons.

If the appellant needs more than 60 days to prepare its statement of reasons, the appellant must request an extension from MMS before the end of the 60-day filing period. In addition, to obtain an extension the appellant would be required to provide a written explanation of the reasons for the extension request to the MMS office where the appellant would otherwise file its statement of reasons. Extensions for filing the statement of reasons, and any other extensions requested in connection with an appeal, would be granted only for ''good cause,'' and only when accompanied by an agreement tolling any and all applicable time periods for issuing decisions, including the 16-month time period in this proposed rule as well as the 33-month time period under the new FOGRMA section 115(h), for the duration of the extension granted. If the Director denies the extension request, then the appellant would be required to file the statement of reasons and the summary by the end of the 60-day period for filing the original appeal. Thus, appellants that need additional time should file their extension requests well before the end of the period.

Under proposed § 290.3(b)(4), if the statement of reasons is not received by the due date, then the Director will dismiss the appeal unless the Director determines that there is good cause in his or her discretion not to dismiss the appeal. If the Director dismisses the appeal, then the order or decision would be final and no further administrative appeal would be available.

As with the notice of appeal, filing the statement of reasons would mean receipt in the appropriate MMS office by the prescribed date. Simply mailing or otherwise transmitting the document would not satisfy the filing requirement.

Consistent with current practice, the MMS office that issued the original order or decision would continue to prepare a field report responding to the statement of reasons. The MMS office would send a copy of the field report to the appellant. Current practice has been for most appellants to prepare written replies to the field report. Under the proposed regulations, the appellant is not required to file any other supplemental documents in connection with an appeal, including responses to field reports, but could file a written request to file supplemental documents in connection with an appeal with the MMS office that issued the order or decision. However, the Director could set deadlines for the filing of any supplemental documents in connection with appeals and may disregard supplemental documents that are filed after the deadline and without an approved extension. The appellant should submit a request for an extension to file supplemental documents in connection with an appeal in writing with the reason for the request. The Director would grant extension requests only for ''good cause,'' and only when accompanied by an agreement tolling any and all applicable time periods for issuing decisions, including the 16-month time period in this proposed rule and the 33-month time period under the new FOGRMA section 115(h), for the duration of the extension granted. If the Director needs additional information from the appellant, or has any questions necessary to decide the appeal, then the appellant would be contacted.

Another change MMS is proposing to the appeals process is the addition of cost recovery and filing fees. The Independent Offices Appropriation Act, 31 U.S.C. § 9701, provides generally for cost recovery by Federal agencies. The Independent Offices Appropriation Act also authorizes agency heads to ''prescribe regulations establishing the charge for a service or thing of value provided by the agency.'' 31 U.S.C. 9701(b). In addition, Office of Management and Budget Circular No. A–25 states that the general Federal policy on cost recovery is to charge ''each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' Furthermore, the Department of the Interior Manual requires that agencies impose charges to recover costs for services which provide a special benefit or privilege to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

MMS must consider cost recovery options for activities which meet the specific criteria outlined above. Because the MMS administrative appeals process is a voluntary activity that conveys a special benefit upon those who use it, it qualifies for cost recovery.

In 1993–94, MMS engaged in a cost recovery study to determine the actual cost of processing an administrative appeal to the Director of MMS. In that study, completed in August 1994, the cost recovery team noted that the cost to MMS for processing an appeal is approximately $2,000 for routine appeals and $8,000 for non-routine appeals. However, as recommended by that study, it may not be feasible to attempt to recover full actual costs. Instead, some smaller charge could be selected. The study recommended that MMS consider the filing fees other judicial and quasi-judicial governmental entities charge.

In determining the recommended filing fee for appeals, MMS considered the following:

(A) the relative hardship upon potential appellants of instituting a filing fee;

(B) the possibility that any filing fee will likely provide some disincentive to the filing of nominal appeals;

(C) the current threshold for issuing appealable bills and orders is $100.00 for Federal cases and $25.00 for Indian cases;

(D) the possibility of a two-tiered fee structure that might include different fees for different types of appeals;

(E) the fact that a filing fee mechanism will result in some increased cost to MMS for billing and collecting the filing fees (estimated by the Department of the Interior Director of Financial Management at $8.00 in 1991);

(F) the MMS appeals process is only the first of two levels of appeal within the Department; and

(G) the MMS appeals process does confer some limited public benefit by acting as a process for the specification and clarification of Federal mineral law and policy.

In considering the recommendation that MMS select a fee less than actual costs, the following is a list of various filing fees charged by other judicial and quasi-judicial governmental agencies:

United States District Court:	
(Civil Action)	$120.00
(Tax Appeal from Tax Court)	100.00
United States Bankruptcy Court:	
(Chapters 7 and 13)	160.00
(Chapter 11)	800.00
United States Tax Court (Petition)	60.00
Board of Immigration Appeals (Appeal from INS decision)	110.00
Federal Energy Regulatory Commission (Review of jurisdictional agency decision)	100.00

Therefore § 290.4 is proposed as a new section implementing the cost recovery requirements under the Independent Offices Appropriation Act and Office of Management and Budget Circular No. A–25. It would provide for a $100.00 filing fee on most appeals to the Director of MMS under this part. Indian tribes and Indian allottees would not be charged a fee.

Under the proposed regulations, the Director cannot consider any appeal for which the appellant has not properly paid the filing fee. Because the regulations require that the appellant put the filing fee in the form of an electronic fund transfer through a financial institution that may operate on different business hours than MMS, MMS would accept a filing fee that is received no later than the end of the next business day after the notice of appeal is filed, or the end of the 60th day after service of the order or decision upon the recipient, whichever is later.

All new appeals commenced after the effective date of the final regulation would be subject to the time limitation and filing requirement changes. The amount of the filing fee would be reevaluated periodically, and any adjustments would be published in the Federal Register.

Section 290.4 currently provides that oral argument will be allowed on an appellant's motion at the discretion of the Director of MMS. That section would be replaced by proposed § 290.5, which reflects that an appellant may request a hearing before the Director or request alternative dispute resolution (ADR). The Director retains discretion to allow a hearing or engage in other forms of ADR. Appellants, however, are encouraged to seek alternative resolution of their appeals where feasible throughout the appeals process. For appeals involving actions of the Royalty Management Program, appellants should contact the Royalty Management Program Office of Enforcement to initiate ADR.

Proposed § 290.6, which states the time limitations for an appeal, has been addressed previously in this preamble.

Proposed § 290.7, which addresses appeals involving Indian lands, is the same as the current § 290.6 with only minor technical amendments.

Proposed § 290.8, which explains how to appeal the MMS Director's decision to the IBLA, is the same as the current § 290.7 with only minor technical amendments.

Proposed § 290.9 addresses the time for the IBLA to issue decisions under the new FOGRMA § 115(h) in cases involving Federal oil and gas leases—namely, the last day of the 33rd month after the date the appeal is commenced, as specified under section 290.2, or, if that period has been extended under any tolling agreement between an appellant and either the MMS or the IBLA, by the last day of the period for which the time has been extended.

If the Board does not issue a decision within that time, then one of two results would occur. With respect to any nonmonetary obligation, and with respect to any monetary obligation for which the principal amount that the appellant must pay is less than $10,000, an appeal would be deemed to have been decided in the appellant's favor. With respect to any monetary obligation for which the principal amount that the appellant must pay is $10,000 or more, the appeal would be deemed decided in MMS' favor and against the appellant. An appeal which is deemed to have been decided against the appellant would be a judicially reviewable final agency action under 5 U.S.C. 704.

The term ''monetary obligation'' means any requirement in any order or decision that results in the appellant having to pay or to compute and pay royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, or assessment. For example, if a lessee asked for a royalty value determination from MMS' Valuation and Standards Division (''VSD''), and if the result of that determination is that the lessee must pay additional royalties, then a monetary obligation would be involved. If the principal amount of a monetary obligation is not specifically stated in an order or decision and must be computed, the $10,000 amount means the principal amount that MMS estimates that the appellant would be required to pay as a result of the order or decision.

II. Procedural Matters

The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). The effect of this rule will be to shorten the MMS' administrative appeals process.

Executive Order 12630

The Department of the Interior certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a

Takings Implications Assessment need not be prepared under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Executive Order 12988

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

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. § 3501 *et seq.*

National Environmental Policy Act of 1969

The Department of the Interior has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 290

Administrative practice and procedure, Mineral royalties—appeals; Penalties; Public lands—Mineral resources.

Dated: October 21, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to revise 30 CFR part 290 as follows:

PART 290—APPEALS PROCEDURES

Sec.
290.1 What appeals does this part apply to?
290.2 How do I appeal an order or decision to the MMS Director?
290.3 When do I file the items required for an appeal?
290.4 How do I pay the filing fee?
290.5 Is oral argument or alternative dispute resolution (ADR) allowed?
290.6 When can I expect a decision from the MMS Director?
290.7 Are there different appeal procedures for Indian lands?
290.8 How do I appeal to the Interior Board of Land Appeals?
290.9 When can I expect a decision from the Interior Board of Land Appeals?

Authority: 25 U.S.C. 2, 9; 30 U.S.C. 189, 285, 359, 1023, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1334, 1335.

§ 290.1 What appeals does this part apply to?

The rules in this part apply to appeals to the Director, Minerals Management Service (MMS) (and the Deputy Commissioner of Indian Affairs when Indian lands are involved), from orders or decisions of MMS officers. This part also provides for the further right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, from adverse decisions of the Director (and the Deputy Commissioner of Indian Affairs when Indian lands are involved) rendered under this part. This part also provides for how to determine time deadlines that apply to these appeals.

§ 290.2 How do I appeal an order or decision to the MMS Director?

If you are adversely affected by an MMS order or decision, you may appeal to the Director, MMS, unless the Director, Assistant Secretary, or the Secretary approved the order or decision before it was issued. You must file the appeal in the MMS office issuing the order or decision. Your appeal does not commence for purposes of the time periods provided in §§ 290.6 and 290.9 and section 115(h) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1725(h), as applicable, until MMS receives all of the following items as further provided in § 290.3:

(a) A written notice of appeal that clearly indicates the order or decision being appealed;

(b) A written statement of reasons, either as part of the notice of appeal or as a separate document, explaining the facts and law you believe justify reversal or modification of the order or decision, including a one-page summary of the arguments presented in the statement of reasons; and

(c) Where applicable, a $100.00 filing fee.

§ 290.3 When do I file the items required for an appeal?

(a) *Notice of appeal.* You must file the notice of appeal in the MMS office that issued the order or decision within 60 days after the order or decision was served upon the recipient. The 60-day time limit for filing the notice of appeal cannot be extended. See paragraph (d) of this section for additional information on timely filing. If you file the notice of appeal late, the Director cannot consider the appeal, and the order or decision appealed from is final. No further administrative appeal is available.

(b) *Statement of reasons.* (1) You must file a statement of reasons in support of your appeal in the MMS office that issued the order or decision at the same time you file your notice of appeal, or as a separate document, within 60 days after the order or decision was served upon the recipient. See paragraph (d) of this section for additional information on timely filing. The statement of reasons may not be longer than 20 pages plus the one-page summary, unless the MMS office that issued the order or decision gives you permission to file a statement of reasons longer than 20 pages.

(2) You may request in writing an extension of time to file the statement of reasons from the MMS office that issued the order or decision within 60 days after the order or decision was served upon the recipient. Your extension request must explain the reason for your request. Your extension request also must include an agreement tolling the running of any applicable time periods, including the time periods for deciding appeals in §§ 290.6 and 290.9 and section 115(h) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1725(h), for the length of the extension granted.

(3) The Director will grant your extension request only for good cause and at the discretion of the Director. If the Director approves your extension request, you must provide written documentation of the extension, including the tolling agreement, by the end of the 60-day period for filing the appeal. If the Director denies your extension request, then you must file the statement of reasons by the end of the 60-day period for filing the appeal.

(4) If you do not file your statement of reasons by the required due date and your notice of appeal does not include a statement of reasons for the appeal, then the Director will dismiss your appeal unless the Director determines that there is good cause in his or her discretion not to dismiss your appeal. If the Director dismisses your appeal, then the order or decision appealed from is final and no further administrative appeal is available.

(c) *Supplemental documents.* (1) You may file a written request to file supplemental documents in connection with an appeal with the MMS office that issued the order or decision. The

Director may establish reasonable due dates for filing supplemental documents in connection with an appeal. See paragraph (d) of this section for additional information on timely filing.

(2) If you file a supplemental document with MMS after the due date for that document, the Director may disregard that document in issuing a decision on the appeal.

(3) You may request in writing an extension of time to file a supplemental document from the MMS office that issued the order or decision if that MMS office receives the request before the document is due. Your extension request:

(i) Must explain the reason for your request;

(ii) Must include an agreement tolling the running of any applicable time periods, including the time periods in §§ 290.6 and 290.9 and section 115(h) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1725(h), for the length of the requested extension granted;

(iii) Will be granted only for good cause and at the discretion of the Director.

(d) *Timely filing.* Your notice of appeal, statement of reasons, or supplemental document is considered filed only when it is received in the MMS office where the appeal is due. Simply mailing or otherwise transmitting the notice of appeal, statement of reasons or supplemental document does not satisfy the filing requirement.

§ 290.4 How do I pay the filing fee?

(a) Unless you are an Indian tribe or allottee, you must pay a $100.00 filing fee for each notice of appeal. Indian tribes or allottees do not have to pay a filing fee.

(b) You must pay the filing fee by electronic funds transfer made payable to ''Minerals Management Service.'' Include with the payment your payor identification number and the number of the order or decision being appealed, where applicable.

(c) If MMS does not receive your filing fee by the end of the next business day after MMS receives your notice of appeal or by the end of the 60th day after service of the order or decision upon the recipient whichever is later, then the Director cannot consider your appeal, and the order or decision appealed from is final. No further administrative appeal is available.

§ 290.5 Is oral argument or alternative dispute resolution (ADR) allowed?

(a) While your appeal is pending, you may:

(1) Meet with the office that issued the order or decision under appeal to resolve the issues you have raised in your appeal (for appeals involving actions of the Royalty Management Program, you may ask the Royalty Management Program's Office of Enforcement to engage in settlement negotiations, mediation, or other ADR); or

(2) Request a hearing before the Director regarding your appeal. The Director has the discretion to decide whether or not to grant the hearing request.

(b) Any hearing by the Director, settlement negotiation, or other ADR will not extend any applicable time period in §§ 290.6, 290.9, or section 115(h) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1725(h), for deciding the appeal unless you and MMS sign a tolling agreement.

§ 290.6 When can I expect a decision from the MMS Director?

(a) For all appeals filed after this rule becomes effective, the Director will issue a decision by the last day of the 16th month after the date the appeal is commenced, as specified under § 290.2, or, if the 16-month period had been extended under any tolling agreement between you and MMS, by the last day of the period for which the time has been extended.

(b) If the Director does not issue a decision on your appeal within the period specified in paragraph (a) of this section, your appeal is deemed denied by the Director, and you may appeal such denials further under § 290.8 of this part. MMS will send you a timely notice that your appeal is denied.

§ 290.7 Are there different appeal procedures for Indian lands?

No. The appeal procedures in this part apply to orders or decisions affecting Indian lands, except that the Deputy Commissioner of Indian Affairs will issue the decision on your appeal.

§ 290.8 How do I appeal to the Interior Board of Land Appeals?

If you are a party to a case, or an Indian tribe or Indian allottee, adversely affected by a decision of the MMS Director or the Deputy Commissioner of Indian Affairs under this part, you may appeal to the Interior Board of Land Appeals (IBLA) in the Office of Hearings and Appeals, Office of the Secretary, in accordance with 43 CFR part 4, ''Department Hearings and Appeals Procedures.'' If your appeal is deemed denied under § 290.6(b) of this part, the date of the Director's decision, for purposes of calculating the due date for filing any appeal to the Interior Board of Land Appeals, is the earlier of:

(a) The date you receive written notice that your appeal was considered denied by the Director; or

(b) 30 days after the last day for the Director to decide the appeal under § 290.6.

§ 290.9 When can I expect a decision from the Interior Board of Land Appeals?

(a) For all appeals from Director's decisions involving royalties or other payments due under Federal oil and gas leases commenced after [the effective date of the final rule], the IBLA will issue a decision by the last day of the 33rd month after the date the appeal is commenced, as specified under § 290.2, or, if that period has been extended under any tolling agreement between you and MMS or you and IBLA, by the last day of the period for which the time has been extended.

(b) If the IBLA does not issue a decision on your appeal within the period stated in paragraph (a), then your appeal will be—

(1) Deemed to have been decided in your favor with respect to any nonmonetary obligation and with respect to any monetary obligation for which the principal amount that you would be required to pay is less than $10,000; or

(2) Deemed to have been decided against you with respect to any monetary obligation for which the principal amount that you would be required to pay is $10,000 or more. An appeal which is deemed to have been decided against you under this paragraph constitutes judicially reviewable final agency action under 5 U.S.C. 704.

(c)(1) As used in this section, the term ''monetary obligation'' means any requirement in any order or decision that results in your having to pay or to compute and pay royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, or assessment.

(2) In the case of any monetary obligation for which the principal amount is not specifically stated in an order or decision and which must be computed to comply with the order or decision, the $10,000 amount in paragraph (b) means the principal amount that MMS estimates that you would be required to pay as a result of the order or decision.

(d) The time limitations in this section for the IBLA to issue a decision do not apply to appeals involving royalties due under Indian tribal or

allotted leases or under Federal leases for minerals other than oil and gas.

[FR Doc. 96–27506 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[TX–7–1–5220b; FRL–5629–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Texas; Control of Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Plants and Total Reduced Sulfur From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing approval of the Texas plans for controlling sulfuric acid mist emissions from existing sulfuric acid production plants and for controlling total reduced sulfur (TRS) from existing kraft pulp mills. The plans were submitted to fulfill the requirements of section 111(d) of the Clean Air Act. These plans were adopted by the State of Texas on May 12, 1989, and submitted by the Governor to the EPA in a letter dated August 21, 1989. Please see the direct final notice of this action located elsewhere in today's Federal Register for a detailed description of the State plan.

DATES: Comments on this proposed rule must be postmarked by November 27, 1996.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Air Quality Program, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wishing to review this plan at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric acid plants, Sulfuric oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 30, 1996.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 96–26558 Filed 10–25–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400106A; FRL–5572–4]

Emergency Planning and Community Right-to-Know; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: This Notice amends a Notice of Public Meetings that was published in the Federal Register of October 1, 1996, announcing two public meetings to receive public comment on issues raised by the Agency's advance notice of proposed rulemaking (ANPR) titled ''Addition of Reporting Elements; Toxic Chemical Release Reporting; Community Right-to-Know,'' also issued in the Federal Register of October 1. This Notice is to inform the public that EPA is extending the public meeting time in Baton Rouge, Louisiana to 2 days due to the large number of people who registered to speak at this meeting and that the location of the meeting is being changed. In order to allow all registered speakers sufficient time to publicly present their comments on these issues, EPA feels it is necessary to provide an additional meeting day. EPA is not extending registration for speakers for this meeting, therefore only those stakeholders already registered to speak at this meeting will be scheduled on the agenda. Speakers who registered on or before October 11, 1996, will be notified by EPA as to which day of the meeting they will be scheduled to speak. The order of speakers will be based upon the order in which they signed up; no specific times will be assigned. Preferences for speaking on a particular day will be given in the order in which the speakers were registered. In addition, EPA is announcing a third public meeting on the issues associated with the ANPR. This meeting will be held in Washington, DC to provide additional opportunity for the public to present their comments to EPA.

DATES: The meeting in Baton Rouge, LA is schedule to take place on October 29 and 30, 1996. The meeting on October 29 is scheduled from 9 a.m. to 5 p.m. The meeting on October 30 will start at 9 a.m. and will continue through the last registered speaker, which will be no later than 5 p.m. The meeting in Washington, DC is scheduled to take place on December 3 and 4, 1996, from 9 a.m. to 5 p.m. or through the last registered speaker, which will be no later than 5 p.m.

ADDRESSES: The meeting on October 29 and 30 will be held at the Best Western Richmond Suites Hotel, 5668 Hilton Avenue, Baton Rouge, LA. (Please note that this is a change of location.) The meeting on December 3 and 4, 1996, will be held at the Environmental Protection Agency, Education Center Auditorium, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: To register to speak at the public meeting on December 3 or 4, contact Cassandra Vail at 202-260-0675, e-mail: vail.cassandra@epamail.epa.gov. For additional information about the meetings, contact Denise Coutlakis at 202-260-5558, e-mail: coutlakis.denise@epamail.epa.gov. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know 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: 800-553-7672.

SUPPLEMENTARY INFORMATION: In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment or otherwise manage. The information is placed in a publicly accessible data base known as the Toxics Release Inventory (TRI). The purpose of this requirement is to inform the public, government officials, and industry about the chemical management practices of specified toxic chemicals.

EPA is interested in expanding the information available via TRI to include chemical use information such as materials accounting data. The Agency

began reviewing this issue in 1993 and held public meetings in 1994 and 1995. On August 8, 1995, President Clinton directed EPA to develop and implement, on an expedited schedule, a process for consideration of reporting use information under TRI. In response, EPA has begun the regulatory development process for additional review of chemical use reporting, which the Agency believes may provide a more detailed and comprehensive picture to the public about environmental performance and about toxic chemicals in their communities. EPA has provided an ANPR to give notice of EPA's consideration of this issue and to solicit comments on all aspects of chemical use and the collection of chemical use data. The purpose of the public meetings is to provide public forums for interested parties to provide input on the issues raised by the ANPR.

Oral statements will be scheduled on a first-come first-serve basis by calling Cassandra Vail at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. EPA encourages meeting participants to provide written statements. All statements will become part of the public record and will be considered in the development of any proposed rule. In order to accommodate and schedule speakers, EPA requests that those interested in speaking at the December 3 and 4, 1996, public meeting register by Thursday, November 21, 1996. If there is sufficient interest, EPA will extend the public meeting for an additional day.

Dated: October 23, 1996.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 96–27709 Filed 10–25–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60–250

RIN 1215–AA62

Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; Correction and Extension of Comment Period

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document contains typographical and technical corrections to the proposed rule published by the Office of Federal Contract Compliance Programs (OFCCP) on Tuesday, September 24, 1996, FR Document Number 96–23638 (61 FR 50080). The proposed rule would revise the current regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). In light of today's corrections, OFCCP has decided to extend the deadline for public comments on the proposed rule.

DATES: The comment period on the proposed rule is extended until December 27, 1996.

ADDRESSES: Comments should be sent to Joe N. Kennedy, Deputy Director, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

As a convenience to commenters, OFCCP will accept public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is 202–219–6195. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling OFCCP at 202–219–9430 (voice), 1–800–326–2577 (TDD).

Copies of this correction document in alternate formats may be obtained by calling 202–219–9430 (voice), 1–800–326–2577 (TDD). The alternate formats available are large print, electronic file on computer disk and audio-tape.

FOR FURTHER INFORMATION CONTACT: Joe N. Kennedy, Deputy Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Room C–3325, Washington, D.C. 20210. Telephone: 202–219–9475 (voice), 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION: OFCCP issued a proposed rule on Tuesday, September 24, 1996 (61 FR 50080), which would revise the current regulations published at 41 CFR Part 60–250 that implement the affirmative action provisions of VEVRAA (38 U.S.C. 4212). The proposal also would withdraw portions of a final rule published by the Department of Labor on December 30, 1980 (which was subsequently suspended) concerning VEVRAA, Executive Order 11246, and Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793), by withdrawing those provisions of the rule which pertain to VEVRAA. As published, the proposed rule contains typographical and technical errors that are in need of clarification. The public comment period for the proposed rule was originally scheduled to end on November 25, 1996. To ensure that the interested public may fully consider the proposal in light of the corrections, and in accordance with Sec. 6(a)(1) of Executive Order 12866, OFCCP has decided to extend the deadline for comments to run for 60 days from the date of today's publication.

Accordingly, in proposed rule document 96–23638 beginning on page 50080 in the Federal Register issue of September 24, 1996, make the following corrections:

1. On page 50084, in the first column, in the 25th line from the top, the number ''95'' is corrected to read ''105''.

2. On page 50085, in the first column, in the third complete paragraph, in the first line, ''(c)(2)'' is corrected to read ''(b)(2)''.

3. On page 50088, in the second column, under the heading entitled ''Section 60–250.42 Invitation to Self-identify'', in the first paragraph, in the first line, the date is corrected to read ''May 1, 1996''.

4. On the same page, in the same column, in the same paragraph, in the second line, the parenthetical is corrected to read ''(61 FR 19366)''.

5. On the same page, in the same column, in the same paragraph, in the tenth line, the parenthetical is corrected to read ''(61 FR 19336)''.

6. On page 50092, in the first column, in the second complete paragraph, in the 15th and 22nd lines, ''paragraph (b)(1)(iii)'' is corrected to read ''paragraph (c)(1)(iii)''.

7. On page 50094, in the second column, in the fourth complete paragraph, in the sixth line, ''either a fixed period'' is corrected to read ''either an indefinite period or a fixed period''.

8. On page 50097, in the third column, under the heading entitled ''Paperwork Reduction Act'', in the first paragraph, in the last line, ''OMB control number 1215–0072'' is corrected to read ''OMB control numbers 1215–0072 and 1215–0163''.

9. On the same page, in the same column, the preamble language under the heading entitled ''Paperwork Reduction Act'' is corrected by adding after the first paragraph, the following paragraph:

''OFCCP solicits comments concerning the proposed revisions to the recordkeeping requirements contained in this proposed rule. OFCCP solicits comments to: (i) Evaluate whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The revised recordkeeping requirements in this proposed rule have been submitted to OMB for review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Written comments on these proposed recordkeeping revisions may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards, Washington, D.C. 20503.''

PART 60–250—[CORRECTED]

10. On pages 50107 and 50108, § 60–250.61 is corrected by redesignating paragraphs (a) through (e) as paragraphs (b) through (f) respectively, and by adding new paragraph (a) to read as follows:

§ 60–250.61 Complaint procedures.

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990 (ADA), OFCCP and the Equal Employment Opportunity Commission have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503), and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part that are cognizable under Section 503 and the ADA will be processed in accordance with those regulations, which are found at 41 CFR part 60–742, and with this part.

* * * * *

§ 60–250.61 [Corrected]

11. On page 50107, in the third column, in § 60–250.61, in redesignated paragraph (c)(2), in the tenth line, ''(b)(1)'' is corrected to read ''(c)(1)''.

Signed at Washington, D.C., this 21st day of October, 1996.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 96–27454 Filed 10–25–96; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 384

[Docket No. R–166]

RIN 2133–AB26

Criteria for Granting Waivers of Requirement for Exclusive U.S.-Flag Vessel Carriage of Certain Export Cargoes

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment concerning whether MARAD should amend its existing criteria and methodologies for granting waivers of the requirement for U.S.-flag vessel carriage of cargo covered by Public Resolution 17, 33rd Congress, 46 App. U.S.C. 1241–1 (PR 17), and if so, what the new procedures should be.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments should be sent to the Secretary, Maritime Administration, Room 7210, 400 7th St., S.W., Washington, DC 20590. Comments will become part of this docket and will be available for inspection or copying at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, Washington, DC 20590. Telephone (202) 366–0364.

SUPPLEMENTARY INFORMATION: PR 17 reads:

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule or at reasonable rates.

The reservation of such cargoes for the U.S.-flag merchant marine helps support a vital national asset which is necessary in times of war or national emergency, and in peacetime provides essential service to ensure the continued flow of foreign water-borne commerce.

In 1934 (37 Op. A.G. 546), and again in 1965 (42 Op. A.G. 301), the Attorney General concluded that PR 17 does not impose a mandatory requirement and is therefore not violated by the granting of waivers. MARAD's current policy on granting waivers was first published in *Pike & Fischer's Shipping Regulation Report* (at ¶ 501) in 1959. The Export-Import Bank (Exim Bank) is the principal agency generating export cargo subject to PR 17.

Under MARAD's existing policy, two types of waivers are granted. The first, called a ''general'' waiver, is granted to allow the national flag vessels of the recipient country to carry 50 percent of the cargo. The condition for receiving a general waiver is that the recipient country not maintain discriminatory policies detrimental to U.S.-flag vessels.

MARAD has long held that the Cargo Preference Act of 1954, 46 App. U.S.C. 1241(b) ('54 Act), is applicable to Exim Bank financed cargoes and must be read together with PR 17. The '54 Act applies ''whenever the United States * * * shall advance funds or credits.'' (*See* 152 Gen. Counsel Op. 107 (May 15, 1970)). The '54 Act requires that 50 percent of the gross tonnage of all cargoes subject to the Act shall be transported on privately-owned U.S.-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels. Thus, general waivers under PR 17 may not be granted in excess of 50 percent.

The second type of waiver is called a ''statutory'' or ''non-availability'' waiver. MARAD's policy provides that Exim Bank loan recipients may apply for a non-availability waiver ''(w)hen it appears that U.S. vessels will not be available from the port or area of shipment to the foreign destinations within a reasonable time or at reasonable rates.'' The policy further states that ''(s)uch waivers shall apply to the specific movements occurring during the period of U.S.-flag non-

availability as approved (by MARAD) * * *''

U.S.-flag vessels are usually available to carry containerized cargo to most destinations. In the past, MARAD has granted non-availability waivers sparingly, and only for specific voyages. Much of the Exim Bank financed cargo is project cargo, comprising oversized pieces of equipment. Breakbulk ships are more suitable for this cargo than are containerships.

In the past year or so, MARAD has received an increased number of complaints from shippers of Exim Bank cargo about MARAD's implementation of PR 17. The shippers are particularly concerned that when they bid on an Exim Bank-financed project, a reasonable projection of transportation costs is required. Project cargoes consist of many shipments over an extended period of time. Frequently, the shipments are planned so that delivery must be made in proper sequence and in critical time frames. Consequently, the shippers take issue with MARAD's present policy of granting waivers for only one voyage at a time, because this policy does not facilitate their long-range transportation planning. On the other hand, the assurance of a stream of PR 17 cargo could enhance the availability of U.S.-flag vessels and reduce the necessity for waivers.

MARAD is seeking comments on whether it should adopt a new policy on the granting of PR 17 waivers by promulgating a new regulation. Among the goals sought to be achieved by any new proposal are: (1) The preservation of a cargo base for carriage by U.S.-flag vessels generated by Exim Bank financing; and (2) maximizing the export of U.S. manufactured goods.

MARAD asks the public to comment on the following options and proposals.

Should MARAD grant a non-availability waiver for periods in excess of one voyage? If so, should the waiver be granted for a period not to exceed six months? for a period coextensive with the life of the project?

Should MARAD allow the U.S.-flag carrier to quote on the entire transportation costs related to a specific project (including containerized and bulk cargo) with the option of chartering foreign-flag vessels to carry oversized cargo if no suitable U.S.-flag vessels are available?

What conditions, if any, should apply to non-availability waivers?

Should any or all of the following criteria be met prior to granting a non-availability waiver?

—There is no present U.S.-flag service available?

—U.S.-flag vessels are not presently serving the proposed destination ports for the project?

—There are draft restrictions on destination ports that may not be able to accommodate U.S.-flag vessels?

—Others?

Should a project-long waiver be granted only when the shipper is required to include an estimate of transportation costs as part of its overall bid to furnish the export project?

Should the shipper be required to provide the carriers with a complete packing list and a proposed transportation schedule of the project for the carriers to evaluate prior to bidding to ship the cargo?

Once MARAD grants a non-availability waiver, what rights do owners and operators of U.S.-flag vessels have to offer U.S.-flag service during the pendency of a specific project should U.S.-flag service later become available?

Under what criteria would U.S.-flag vessels be able to provide service during a specific project once it has commenced?

What incentives, if any, should be provided U.S. companies to encourage the carriage of oversized Exim Bank cargo?

Interested persons, corporations, or any other entities, are invited to submit written comments on the above mentioned options, or to offer alternatives. After consideration of the comments received, MARAD will decide whether to proceed with a specific proposed change to MARAD's existing policy.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

If a rule is actually promulgated, it would not be considered an economically significant regulatory action under section 3(f) of E.O. 12866. In the event that MARAD decides to proceed with a rulemaking, a preliminary regulatory evaluation would be prepared that reflects the comments to this advance notice of proposed rulemaking.

Federalism

MARAD has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration has evaluated this rule under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, and certifies that any rule that might be promulgated subsequent to this advance notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities. Companies providing the carriage of preference cargoes are not small entities.

Any rule that might be subsequently promulgated would not be expected to significantly affect the environment. Accordingly, an Environmental Impact Statement would not be required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

Any rule that might be promulgated would not be expected to significantly change the current requirement for the collection of information.

Dated: October 23, 1996.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–27597 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 61, No. 209
Monday, October 28, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona 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 Arizona Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 3:00 p.m. on November 4, 1996, at the Hyatt Regency Phoenix, 122 North Second Street, Phoenix, Arizona 85004. The purpose of the meeting is to hold a forum on policies and practices of the Arizona State Department of Transportation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Acting Chairperson Manuel Peña, 602–542–4171, 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 17, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–27595 Filed 10–25–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket No. 9608234–6292–02]

RIN 0690–AA25

Guidelines for Empowerment Contracting

AGENCY: Department of Commerce.

ACTION: Notice; reopening of comment period.

SUMMARY: On September 13, 1996, the Department of Commerce issued proposed Guidelines for Empowerment Contracting and requested public comments to be submitted on or before October 15, 1996, (61 FR 48463). The Department is reopening the comment period and extending the deadline to receive comments to December 1, 1996. The guidelines set forth proposed policies and procedures intended to promote economy and efficiency in Federal procurement by granting qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress. The guidelines are proposed in accordance with the President's Executive Order 13005 entitled, ''Empowerment Contracting.'' The standards set forth in the proposed guidelines will serve as the basis for a proposed revision to the Federal Acquisition Regulation (FAR). Information obtained from public comment on the guidelines will be used to help draft the proposed FAR revision.

DATES: Comments must be submitted on or before December 1, 1996.

ADDRESSES: Comments may be mailed to the Department of Commerce, Office of the Assistant General Counsel for Finance and Litigation, Room 5896, 14th and Constitution Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joe Levine, 202–482–1071.

Dated: October 22, 1996.

Lawrence Parks,

Director, Office of Regional Growth.

[FR Doc. 96–27565 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–17–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–11A004.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to AMT—The Association for Manufacturing Technology (''AMT'') on May 19, 1987. Notice of issuance of the Certificate was published in the Federal Register on May 22, 1987 (52 FR 19371). The AMT Certificate was previously amended on December 11, 1987 (52 FR 48454, December 22, 1987), January 3, 1989 (54 FR 837, January 10, 1989), April 20, 1989 (54 FR 19427, May 5, 1989), May 31, 1989 (54 FR 24931, June 12, 1989), May 29, 1990 (55 FR 23576, June 11, 1990), June 7, 1991 (56 FR 28140, June 19, 1991), November 27, 1991 (56 FR 63932, December 6, 1991), July 20, 1992 (57 FR 33319, July 28, 1992), May 10, 1994 (59 FR 25614, May 17, 1994), and December 1, 1995 (61 FR 13152, March 26, 1996).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Ch. III Part 325 (1995).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AMT's Certificate has been amended to:

1. Add as ''Members'' the following companies: ATS Ohio, Westerville, Ohio; and Banner Welder, Germantown, Wisconsin.

2. Delete as ''Members'' the following companies: Bath Iron Works; Berger Lahr Motion Technology, Inc.; George Fischer, Ltd.; Huron Machine Products; K.T. Design & Prototype; Light Machine Corp.; and Surf/Tran Burlytic Systems Division.

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parenthesis as follows: The Cincinnati Gilbert Machine Tool Co. (The Cincinnati Gilbert Machine Tool

Co. L.L.C.); CM Positech (Columbus McKinnon, for the activities of its CM Positech Division); D.A. Griffin (Griffin Automation); Litton (Western Atlas); Hobart Brothers Company (Hobart Laser Products); Republic Lagun Machine Tool Co. (Republic Lagun CNC Corp.); Wadell Machine & Tool Co. (Rendas Tool & Die, Inc., for the activities of its Wadell Division); and Wallace Coast Machinery Corp. (Jesse Engineering Co., for the activities of its Wallace Coast Machinery Division).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Effective Date: July 16, 1996.

Dated: October 22, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–27598 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–DR–P

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Binational Panel Decision.

SUMMARY: On September 27, 1996 the Binational Panel issued its decision in the review of the final antidumping duty administrative review made by the Secretaria de Comercio y Fomento Industrial de Mexico (SECOFI) respecting Flat Coated Sheet Products from the United States, Secretariat File No. MEX–94–1904–01. The Binational Panel unanimously affirmed in part and remanded in part the final determination. A copy of the complete Panel decision in Spanish or English is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Goverment of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The Binational Panel review in this matter was conducted in accordance with these Rules.

Background

On September 1, 1994 Inland Steel Company and USX Corporation filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination that was published in the *Diario Oficial* on August 2, 1994. Complaints were filed by Inland, USX, Bethlehem Steel Corporation, LTV Steel Company, New Process Steel Corporation and Industrias Monterrey, S.A. de C.V. (IMSA). Briefs were filed by all participants and oral argument was held in accordance with the Rules.

Panel Decision

In its September 27 decision, the Binational Panel unanimously affirmed in part and remanded in part the final determination. In its Order the panel affirmed all aspects of the final determination except for several specific instructions to SECOFI to take further actions. The Panel Order then enumerated specific actions involving competence and formality requirements, dumping issues, and injury issues. The Panel directed SECOFI, on remand, to comply with the specific instructions within 120 days of the date of this Order (by not later than January 27, 1997.)

Dated: October 14, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–27594 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

[Docket No. 960516133–6285–02]

RIN 0693–XX19

Voluntary Product Standard, Amendment and Editorial Correction to PS 20–94

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; announcement of an amendment and an editorial correction to Voluntary Product Standard PS 20–94 American Softwood Lumber Standard.

SUMMARY: On July 18, 1996, NIST requested the American Lumber Standard Committee (ALSC) to amend PS 20–94 to clarify NIST's role in the nomination of members to the ALSC Board of Review. The Committee unanimously approved the amendment, which became effective August 24, 1996. Also, on July 18, 1996, NIST notified the ALSC that it was making an editorial correction for the purpose of clarification to § 5.1 of PS 20–94 and that the correction would become effective immediately.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, (301) 975–4025.

SUPPLEMENTARY INFORMATION: Voluntary Product Standard PS 20–94 American Softwood Lumber Standard was developed under procedures published by the Department of Commerce in Part 10, Title 15, of the Code of Federal Regulations. The ALSC acts as the Standing Committee for PS 20–94.

This announcement is to provide public notice of the recent amendment and editorial correction to PS 20–94. These changes shall be listed as addenda to the standard until the standard is reprinted.

The amendment affects three sections of PS 20–94. The sections have been modified to read as follows:

§ 10.4 Composition, election, terms, compensation, and removal—The Board shall be composed of three members, none of whom shall be members of the ALSC or affiliated with a grading agency or any member of a grading agency.

§ 10.4.1 The chairman of the ALSC shall appoint a spokesperson for each of the three membership groups within the ALSC that shall nominate members of the Board. The spokesperson shall determine and report the decision of the group to the Chairman along with a summary of the qualifications of each nominee and a statement of any interests, financial or otherwise, which the nominee has in the lumber industry. Except as provided in 10.4.1.4, Board members shall be nominated as follows:

§ 10.4.1.5 The names of the nominees shall be submitted to the Department of

Commerce prior to election and shall be accompanied by the summary of the qualifications of each nominee and an attestation that the requirements of 10.4 and 10.4.1 have been met.

The editorial correction, which was made by NIST pursuant to its authority under § 10.12 of Department procedures, affects § 5.1 and was made to improve the clarity of this section and to read as follows:

§ 5.1 Rough size—The minimum rough thickness of dry or unseasoned lumber 1 or more inches in nominal thickness shall be not less than 1/8 inch (3 mm) thicker than the corresponding minimum dressed thickness, except that up to 20 percent of a shipment shall be not less than 3/32 inch (2 mm) thicker than the corresponding minimum dressed thickness. The minimum rough widths shall not be less than 1/8 inch (3 mm) wider than the corresponding minimum dressed width.

Authority: 15 USC 272 and 15 CFR Part 10.

Dated: October 22, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–27566 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

October 22, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: October 22, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 65292, published on December 19, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on October 22, 1996, you are directed to increase the limits for the following categories, as provided for under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433–436, 438, 440, 442–444, 445/446, 445, 448, 604, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,460,250,403 square meters equivalent.
Sublevels in Group I	
219	2,300,289 square meters.
226	10,956,994 square meters.
300/301	3,774,986 kilograms.
313	44,102,137 square meters.
317/326	21,125,435 square meters of which not more than 4,041,711 square meters shall be in Category 326.
333	92,532 dozen.
335	401,285 dozen.
340	873,727 dozen of which not more than 436,864 dozen shall be in Category 340–Z [12].
345	137,238 dozen.
350	165,162 dozen.
351	527,672 dozen.
360	7,678,590 numbers of which not more than 5,139,642 numbers shall be in Category 360–P [13].
361	4,268,808 numbers.
363	32,076,259 numbers.
369–D	4,794,564 kilograms.
369–H	4,738,905 kilograms.
369–L	3,266,571 kilograms.
410	2,095,834 square meters of which not more than 1,680,038 square meters shall be in Category 410–A [14] and not more than 1,680,038 square meters shall be in Category 410–B [15].
433	24,420 dozen.
434	13,914 dozen.
435	25,557 dozen.
436	15,902 dozen.

Category	Adjusted twelve-month limit [1]
438	27,582 dozen.
440	39,756 dozen of which not more than 22,718 dozen shall be in Category 440–M [16].
442	44,299 dozen.
448	23,250 dozen.
607	3,099,291 kilograms.
613	7,627,604 square meters.
614	11,986,234 square meters.
615	24,953,161 square meters.
617	17,434,521 square meters.
633	56,903 dozen.
635	650,505 dozen.
644/844	3,717,498 numbers.
651	787,978 dozen of which not more than 138,729 dozen shall be in Category 651–B [17].
652	2,658,944 dozen.
659–C	417,164 kilograms.
659–S	620,911 kilograms.
669–P	2,026,669 kilograms.
833	28,180 dozen.
835	127,395 dozen.
836	282,509 dozen.
842	273,688 dozen.
845	2,468,997 dozen.
846	177,150 dozen.
Sublevel in Group III	
224–V [18]	3,460,912 square meters.
Levels not in a group	
369–S [19]	622,361 kilograms.
863–S [20]	8,703,646 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[18] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[19] Category 369–S: only HTS number 6307.10.2005.

[20] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–27562 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

October 22, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 604 is being increased for carryforward and swing. The limit for Category 301–P is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62396, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 22, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation

of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on October 29, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
301–P [2]	4,047,819 kilograms.
604	708,966 kilograms of which not more than 408,772 kilograms shall be in Category 604–A [3].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 301–P: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000.

[3] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–27563 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

October 23, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 435 is being increased for carryover. The limit for Categories 638/639 is being reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62396, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 23, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on October 29, 1996, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
435	60,292 dozen.
638/639	2,195,700 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.96–27564 Filed 10–25–96; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, October 30, 1996, 11:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 1997 Operating Plan

The Commission will consider issues related to the Commission's Operating Plan for Fiscal Year 1997.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 24, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–27739 Filed 10–24–96; 2:00 pm]

BILLING CODE 6355–01–M

Sunshine Act Meeting

TIME AND DATE: Thursday, October 31, 1996, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Ketoprofen

The staff will brief the Commission on a staff recommendation that the Commission propose a rule requiring child-resistant packaging under the Poison Prevention Packaging Act for the drug ketoprofen.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 24, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–27740 Filed 10–24–96; 2:00 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered are expanding membership on the Defense Partnership Council, a Human Resources legislative update and status reports on partnership within the Department.

DATES: The meeting is to be held Wednesday, November 20, 1996, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by November 15, 1996, in order to be considered at the November 20 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: October 22, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–27590 Filed 10–25–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. Four public sessions will be held in 1996. The OSD Historian will chair these meetings.

DATES: Friday, November 15, 1996 (Meeting will start at 9:00 a.m.).

ADDRESSES: 3801 North Fairfax Drive, Room 510B, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: October 22, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–27589 Filed 10–25–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Transfer of the Civilian Marksmanship Program

AGENCY: Office of the Administrative Assistant, U.S. Army.

ACTION: Notice.

SUMMARY: The following certification of completion was signed by Togo D. West, Jr., Secretary of the Army and delivered to the Chairmen and the Ranking Minority Members of the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives on 1 Oct. 96 pursuant to the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, Title XVI, section 1623(a). All actions required by the Act were completed on or before September 30, 1996.

This is to certify that transfer of the Civilian Marksmanship Program from conduct by the Department of the Army to conduct by the Corporation for the Promotion of Rifle Practice and Firearms Safety in accordance with the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, Title XVI, section 1601, 1611–1624, has been completed. Specifically, a Board of Directors has been appointed pursuant to section 1611(c)(5) and the transition required under section 1612(d) has been completed.

FOR FURTHER INFORMATION CONTACT: Sandra R. Riley, Director, Policy and Plans, Office of the Administrative Assistant, 105 Army Pentagon, Washington, DC 20310–0105, phone (703) 697–6900.

SUPPLEMENTARY INFORMATION: Publication of this certification is published in the Federal Register in compliance with section 1623(b) of the Act.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–27551 Filed 10–25–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Correction to a Notice of a Public Meeting.

SUMMARY: This corrects the notice of the meeting of the Federal Interagency Coordinating Council, which was published on October 7, 1996 in Vol. 61, No. 195, p. 52442. The corrected date is November 7, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–27553 Filed 10–25–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 96–54–NG, 96–55–NG, 96–60–NG, 96–61–NG, 96–63–NG, 96–56–NG, 96–50–NG, 96–52–NG]

Interenergy Sheffield Processing Co., NUI Energy Brokers, Inc., ProGas U.S.A., Inc., ProGas U.S.A., Inc., Intalco Aluminum Corporation, Amoco Canada Marketing Corp., Coastal Gas Marketing Company, Coastal Gas Marketing Company; Orders Granting Authorization to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence

Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 15, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT AUTHORIZATIONS GRANTED

DOE/FE authority order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1195	09/11/96	Interenergy Sheffield Processing Company (96–54–NG).	3,300 Mcf/per day ...	.....	Long-term for 14 years from Canada beginning on first delivery.
1196	09/16/96	NUI Energy Brokers, Inc. (96–55–NG)	100 Bcf/term (Combined total).	(See import).	Blanket for 2 years from and to Canada and Mexico.
1197	09/16/96	ProGas U.S.A., Inc. (96–60–NG)	10,309 Mcf/per day	.....	Long-term for 7 years from Canada.
1198	09/16/96	ProGas U.S.A., Inc. (96–61–NG)	7,841 Mcf/per day ...	.....	Long-term for 5 years from Canada.
1199	09/16/96	Intalco Aluminum Corporation (96–63–NG).	2 Bcf/term	.....	Blanket for 2 years from Canada.
1200	09/16/96	Amoco Canada Marketing Corp. (96–56–NG).	300 Bcf/term	.....	Blanket for 2 years from Canada.
1201	09/18/96	Coastal Gas Marketing Company. (96–50–NG).	18,100 Mcf/per day	.....	Long-term for 11 years from Canada.
1202	09/24/96	Coastal Gas Marketing Company. (96–52–NG).	48,300 Mcf/per day	.....	Long-term for 11 years from Canada.

[FR Doc. 96–27569 Filed 10–25–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–2673–000]

AYP Energy, Inc.; Notice of Issuance of Order

October 23, 1996.

AYP Energy, Inc. (AYP) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, AYP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by AYP. On October 8, 1996, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's October 8, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by AYP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, AYP is hereby authorized, pursuant to Section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of AYP, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of AYP's issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 7, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27577 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–35–000]

CNG Transmission Corporation; Notice of Section 4 Filing

October 22, 1996.

Take notice that on October 15, 1996, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which CNG currently provides on uncertificated gathering facilities which are being abandoned in place or sold. CNG states that no contracts for transportation service with CNG will be terminated. CNG further states that production from individual wells has been rerouted to other sections of line, and approximately 1500 feet will be given to CNG Production Company (CNGT) for use with one well. CNG asserts that the meter for CNGT will be moved further downstream.

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. Pursuant to Section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before October 28, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27538 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–34–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

October 22, 1996.

Take notice that on October 15, 1996, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.212) to install one delivery tap pursuant to its blanket certificate in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that the proposed delivery tap is to be installed on Equitrans' field gathering pipeline No. F–1136 in Braxton County, West Virginia. The tap will be instituted to provide transportation deliveries to Equitable Gas for ultimate distribution to one residential customer. Equitrans indicates that it will charge Equitable the applicable transportation rate contained in Equitrans' FERC Gas Tariff on file with and approved by the Commission. Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately 1 Mcf on a peak day.

Equitrans states that it will offer the proposed service within the existing certificated transportation entitlements of Equitable Gas under Equitrans' Rate Schedule FTS. Equitrans indicates that its tariff does not prohibit this type of service. Further, Equitrans states that the total volumes to be delivered to Equitable Gas after this request do not exceed the total volumes authorized prior to the request.

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 Rules of Practice and Procedure (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 is deemed to be authorized effective on 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. 96–27531 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–37–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

October 22, 1996.

Take notice that on October 15, 1996, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275 filed in Docket No. CP97–37–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install one delivery tap under the blanket certificate issued in Docket No. CP83–508–000, and transferred to Equitrans in Docket No. CP86–676–000, 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.

Equitrans states that the proposed delivery tap is to be installed on its field gathering pipeline No. W–1901 in Lewis County, West Virginia. Equitrans says that the tap will be used to provide transportation deliveries to Equitable Gas Company (Equitable) for ultimate distribution to one residential customer, Edward Warren in Weston, West Virginia. Equitrans says it will charge Equitable the applicable transportation rate contained in its FERC Gas Tariff. Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately 1 Mcf on a peak day. Equitrans says it has sufficient capacity to accomplish the deliveries without detriment to its other customers. Equitrans relates that its tariff does not prohibit this type of service and that the total volumes to be delivered to Equitable do not exceed the total volumes authorized prior to the request.

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. 96–27532 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–380–001]

Florida Gas Transmission Company; Notice of Compliance Filing

October 22, 1996.

Take notice that on October 16, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 4, 1996.

Substitute First Revised Second Revised Sheet No. 189
Substitute First Revised Sheets No. 190

FGT states that on September 4, 1996 FGT filed tariff sheets (September 4 Filing) to revise the construction of facilities section of its Tariff to clarify the standards for the subsidization of facilities and provide for notification of any such subsidies. In the October 4 Order, the Commission accepted the tariff sheets included in the September 4 Filing subject to FGT filing revised tariff sheets incorporating three revisions within 15 days.

Specifically, the October 4 Order requires: 1) the phrase ''unless otherwise ordered by the Commission'' be added to the end of the first sentence in Section 21D, 2) the phrase ''unless otherwise agreed to in writing'' be placed after the words ''on the following terms'' at the end of the introductory paragraph in Section 21D, and 3) the phrase ''on a not unduly discriminatory basis'' be added to the opening paragraph of section 21D after the phrase ''on the following terms''. FGT is making the instant filing incorporating the required changes in compliance with the Commission's October 4 Order. FGT states that Substitute First Revised Sheet No. 190 is being revised only to correct a typographical error from ''third (30)'' to ''thirty (30)'' days.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC,

20426, in accordance with Section 385.211 of the Commission's 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. 96–27537 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2985–000]

Keyspan Energy Services, Inc.; Notice of Issuance of Order

October 23, 1996.

Keyspan Energy Services, Inc. (Keyspan Energy) submitted for filing a rate schedule under which Keyspan Energy will engage in wholesale electric power and energy transactions as a marketer. Keyspan Energy also requested waiver of various Commission regulations. In particular, Keyspan Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Keyspan Energy.

On October 11, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Keyspan Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Keyspan Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Keyspan Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 12, 1996. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27576 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–730–001]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1996.

Take notice that on October 16, 1996, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, the following tariff sheets, to become effective November 16, 1996:

Original Sheet No. 0
Fifth Revised Sheet No. 1
First Revised Sheet No. 100

Mid Louisiana states that the filing of the Revised Tariff Sheet is in response to Commission Order, dated August 23, 1996 in Docket No. CP95–730–000 wherein the Commission granted the abandonment of certain previously certificated services.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheets to become effective November 16, 1996, as submitted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 compliance filing are no file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27529 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–199–004]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1996.

Take notice that on October 17, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet with a proposed effective date of November 1, 1996:

Eleventh Revised Sheet No. 10

MRT states that the purpose of this filing is to correct minor pagination problems that have developed as a result of MRT's September 17, 1996 filing in Docket No. RP96–199–000 (Motion Rate Filing) to place rates into effect October 1, 1996.

Additionally, MRT moves to place into effect, as of November 1, 1996, the following tariff sheet that was included in MRT's April 1, 1996 filing and accepted and suspended by the Commission's Order Accepting and Suspending Proposed Tariff Sheets, Subject to Refund, Investigation, and Conditions, 75 FERC ¶ 61,095 (1996):

Fourth Revised Sheet No. 11

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27535 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–25–003]

Mississippi River Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

October 22, 1996.

Take notice that on October 17, 1996, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheet to Third Revised Volume No. 1 of its FERC Gas Tariff:

Substitute Tenth Revised Sheet No. 10

MRT states that the purpose of this filing is to correct minor pagination problems that have developed as a result of MRT's September 17, 1996 filing in Docket No. RP96–199–000 (Motion Rate Filing) to place rates into effect October 1, 1996.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27539 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–40–000]

Northern Natural Gas Company; Notice of Application

October 22, 1996.

Take notice that on October 16, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.18 of the Commission's Regulations thereunder for permission and approval to abandon as non-jurisdictional facilities, by sale to Enron Mountain Gathering Inc. (EMGI), certain non-contiguous facilities including compression, pipeline and delivery point facilities, with appurtenances, located in Colorado and Wyoming, and certain services rendered thereby, all as more fully set forth in the application on file with the Commission and open to public inspection.

In accordance with the provisions of an Asset Purchase Agreement dated August 30, 1996 (Agreement), Northern proposes to convey to EMGI certain facilities, including appurtenances, which include three (3) transmission lateral compressor stations located in Routt and Mesa Counties, Colorado, approximately 36 miles of pipeline with diameters of 4 and 6 inches and delivery point facilities located along these pipelines, located in Routt, Moffat and Mesa Counties, Colorado and Carbon County, Wyoming.

Northern states that EMGI will be filing with the Commission a Petition for Declaratory Order seeking a determination that the facilities, once conveyed to it, are gathering facilities not subject to the Commission's jurisdiction pursuant to NGA Section 1(b).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition 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 petition 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 Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition 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 petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27533 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–346–000]

Southern Natural Gas Company; Notice of Technical Conference

October 22, 1996.

In the Commission's order issued September 20, 1996, the Commission held that the filing in the above-captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Wednesday, December 4, 1996, at 9:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27536 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–26–000]

Trunkline LNG Company; Notice of Application

October 22, 1996.

Take notice that on October 15, 1996, Trunkline LNG Company (Trunkline) LNG), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP97–26–000 an application pursuant to Section 7(c) of the Natural Gas Act and Subpart G of Part 284 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Trunkline LNG to provide open-access firm and interruptible LNG terminal service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline LNG states that the proposed service will be provided to shippers using existing LNG terminal facilities at Lake Charles, Louisiana and such terminal service will consist of the receipt of LNG at the Terminal by LNG vessels or LNG trucks, the storage of the LNG in Turnkline LNG's terminal, and the delivery of the LNG to LNG vessels or LNG trucks or the regasification of LNG and delivery of the regasified LNG to pipelines. Trunkline LNG further states that while it has no shippers for its proposed open-access service, the requested authorization will alleviate

the delay inherent in the preparation and submission of a certificate application which must be approved before service could commence. Trunkline LNG notes that no construction of additional facilities is proposed.

Trunkline LNG points out that, while the proposed open-access service will be offered on a firm and interruptible basis. the availability of firm service is severely limited by Trunkline LNG's prior commitment to PanEnergy LNG. Trunkline LNG indicates that since the market may find terminal services available on a short-term basis worthwhile, the proposed tariff provisions governing the availability, scheduling and curtailment of open-access service have been carefully crafted to enable Trunkline LNG to provide short-term firm and interruptible service without interfering with PanEnergy LNG's priority to the long-term capacity of the Terminal.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1996, file with the Federal Energy Regulatory Commission, 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 jurisdiction conferred upon the Federal Energy Regulation 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 motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27530 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–52–000]

Western Gas Interstate Company; Notice of Proposed Changes in FERC Gas Tariff

October 22, 1996.

Take notice that on October 17, 1996, Western Gas Interstate Company (WGI), tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 10, with a proposed effective date of October 1, 1996.

WGI states that it is submitting the tariff sheet to comply with Order No. 472 in Docket No. RM87–3–000, establishing that cost responsibility for the Commission's budgetary expenses would be assessed against gas pipelines and others through annual charges. Order No. 472 permitted pipelines to pass through these annual charges by means of an Annual Charge Adjustment Provision. In accordance with Order No. 472 and Section 28 of the General Terms and Conditions of WGI's FERC Gas Tariff, WGI submits for filing First Revised Sheet No. 10 to track the Commission's approved ACA unit rate of $0.0020 per Mcf ($0.0020 per MMBtu on WGI's system) effective October 1, 1996.

WGI requests waiver of Section 154.402(b)(3) of the Commission's rules in order to permit the proposed tariff sheet to become effective on October 1, 1996.

WGI states that copies of the filing were served upon WGI's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the 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. 96–27540 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG97–1–000, et al.]

CEA Meiya Power Ltd., et al.; Electric Rate and Corporate Regulation Filings

October 21, 1996.

Take notice that the following filings have been made with the Commission:

1. CEA Meiya Power Ltd.

[Docket No. EG97–1–000]

On October 8, 1996, CEA Meiya Power Ltd. (''CNP''), with its principal office at P.O. Box HM 1022, Clarendon House, Church Street, Hamilton HM DX, Bermuda, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CNP is a company organized under the laws of Bermuda. CNP will be engaged, indirectly through an Affiliate, as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a 100 MW coal-fired cogeneration facility consisting of two 50 MW steam boilers and three extracting/condensing steam turbines to be located in Nanjing Jiangsu Province, People's Republic of China and to engage in project development activities with respect thereto.

Comment date: November 8, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. New Energy Ventures, Inc. v. Southern California Edison Company and Edison Source

[Docket No. EL97–2–000]

Take notice that on October 11, 1996, New Energy Ventures, Inc. (NEV) tendered for filing a complaint against Southern California Edison Company (SCE) and Edison Source. NEV states that SCE has refused to provide market information to non-affiliates at the same time that it provides such information to Edison Source in violation of the applicable code of conduct and Commission orders.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Cenerprise, Inc., ICPM, Inc., Sonat Power Marketing Inc., Prarie Winds Energy, Inc., Eastex Power Marketing, Inc., EMS Gas Transmission Company, Sonat Power Marketing Inc.

[Docket Nos. ER94–1402–010; ER95–640–006; ER95–1050–006; ER95–1234–002; ER96–118–004; ER96–2320–001; ER96–2343–001 (not consolidated)]

Take notice that the following informational filings have been made wit the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 15, 1996, Cenerprise, Inc. filed certain information as required by the Commission's December 7, 1994, order in Docket ER94–1402–000.

On October 15, 1996, ICPM, Inc. filed certain information as required by the Commission's March 31, 1995, order in Docket ER95–640–000.

On October 15, 1996, Sonat Power Marketing Inc. filed certain information as required by the Commission's August 18, 1995, order in Docket ER95–1050–000.

On October 8, 1996, Prarie Winds Energy, Inc. filed certain information as required by the Commission's August 28, 1995, order in Docket ER95–1234–000.

On September 5, 1996, Eastex Power Marketing, Inc. filed certain information as required by the Commission's November 28, 1995, order in Docket ER96–118–000.

On October 8, 1996, EMC Gas Transmission Company filed certain information as required by the Commission's September 3, 1996 order in Docket ER96–2320–000.

On October 15, 1996, Sonat Power Marketing Inc. filed certain information as required by the Commission's August 12, 1996, order in Docket ER96–2343–000.

4. Burlington Resources Trading Inc.

[Docket No. ER96–3112–000]

Take notice that on October 15, 1996, Burlington Resources Trading Inc. tendered for filing additional supplemental information to its September 27, 1996, filing in the above-referenced docket.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Texas Utilities Electric Company

[Docket No. ER97–98–000]

Take notice that on October 9, 1996, Texas Utilities Electric Company (TU Electric) tendered for filing two executed transmission service agreements (TSA's) with PanEnergy Power Services, Inc. and DuPont Power Marketing Inc. for certain Economy energy Transmission Service under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA's that will permit them to become effective on or before the service commencement date under each of the two TSA's. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on PanEnergy Power Services, Inc. and DuPont Power Marketing Inc. as well as the Public Utility Commission of Texas.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Ocean State Power

[Docket No. ER97–125–000]

Take notice that on October 15, 1996, Ocean State Power (Ocean State), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Regulatory Commission (FERC or the Commission):

Supplements No. 19 to Rate Schedule FERC No. 1
Supplements No. 16 to Rate Schedule FERC No. 2
Supplements No. 15 to Rate Schedule FERC No. 3
Supplements No. 16 to Rate Schedule FERC No. 4

The Supplements to the rate schedules are amendments that clarify the true-up payment procedures with respect to certain taxes Ocean State is permitted to bill its power purchasers under the rate schedules. The Supplements do not increase or decrease the rates already approved under the rate schedules.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, and Montaup Electric Company.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Company

[Docket No. ER97–126–000]

Take notice that on October 15, 1996, Atlantic City Electric Company (ACE), tendered for filing an unexecuted service agreement under which ACE will provide non-firm point-to-point transmission service to Vineland Municipal Electric Utility in accordance with the ACE Open Access Transmission Tariff.

ACE states that a copy of the filing has been served on Vineland.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER97–127–000]

Take notice that on October 15, 1996, New England Power Company (NEP), filed two service agreements with AIG Trading Corporation and Williams Energy Services Company for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. MidAmerican Energy Company

[Docket No. ER97–128–000]

Take notice that on October 15, 1996, MidAmerican Energy Company, 106 East Second Street, Davenport, Iowa 52801, tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of the following:

1. Third Revised Sheet No. 16, superseding Second Revised Sheet No. 16;
2. First Revised Sheet Nos. 17 and 18, superseding Original Sheet Nos. 17 and 18;
3. Original Sheet Nos. 19 and 20.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.*, 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the period July 1, 1996 through September 30, 1996.

MidAmerican proposes an effective of July 1, 1996 for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the *Southern Company Services, Inc.*, order and the effective date authorized in Docket No. ER96–2439–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER97–129–000]

Take notice that on October 16, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated October 4, 1996, establishing Minnesota Power as a point-to-point transmission customer under the terms of WP&L's Transmission Tariff.

WP&L requests an effective date of October 4, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER97–130–000]

Take notice that on October 15, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing Form of Service Agreements for Customers who have signed WP&L's Final Order pro forma transmission tariff submitted in Docket No. OA96–20–000. The customers are AES Power, Inc., Coastal Electric Services Company, Commonwealth Edison Company, Heartland Energy Services, Inc., Industrial Energy Applications, Inc., InterCoastal Power Marketing Company, Jpower Inc., LG&E Power Marketing Inc., Rainbow Energy Marketing Corp., Tennessee Power Company, and UtiliCorp United. The customers had previously signed earlier versions of WP&L's transmission tariffs.

WP&L requests an effective date of July 6, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER97–131–000]

Take notice that on October 15, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Berkshire Power Development, Inc. (Berkshire Power). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Berkshire Power to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Berkshire Power a Participant in the Pool. NEPOOL requests an effective date on or before December 1, 1996, or as soon as possible thereafter for commencement of participation in the Pool by Berkshire Power.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER97–132–000]

Take notice that on October 16, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Western Power Services, Inc. under APS' Open Access Transmission Tariff filed in Compliance with FERC Order No. 888.

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission. APS requests that the Service Agreement become effective October 8, 1996.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER97–133–000]

Take notice that on October 16, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Non-Firm Transmission Service Agreement between itself and Morgan Stanley Capital Group, Inc. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Morgan Stanley Capital Group Inc. to receive non-firm transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Morgan Stanley Capital Group Inc., the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER97–134–000]

Take notice that on October 16, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Koch Power Services under Rate GSS.

Comment date: October 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Ocean State Power II

[Docket No. ER97–136–000]

Take notice that on October 15, 1996, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 18 to Rate Schedule FERC No. 5
Supplements No. 18 to Rate Schedule FERC No. 6
Supplements No. 17 to Rate Schedule FERC No. 7
Supplements No. 17 to Rate Schedule FERC No. 8

The Supplements to the rate schedules are amendments that clarify the true-up payment procedures with respect to certain taxes Ocean State II is permitted to bill its power purchasers under the rate schedules. The Supplements do not increase or decrease the rates already approved under the rate schedules.

Copies of the Supplements have been served upon Boston Edison Company, New England Power Company, and Montaup Electric Company.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Deseret Generation & Transmission Co-operative

[Docket No. ER97–137–000]

Take notice that on October 11, 1996, Deseret Generation & Transmission Co-operative (Deseret), tendered for filing its initial rate tariff, filed pursuant to Section 205 of the Federal Power Act and § 35.12 of the regulations of the Federal Energy Regulatory Commission (FERC or Commission).

Among the items included in the initial rate filing are:

Part 35 Information

A. Letter of Transmittal
B. Exhibit 1—Summary of Workout
C. Exhibit 2—Estimates of Transactions and Revenues
D. Exhibit 3—Basis and Explanation of Rates
E. Exhibit 4—Summary Statement of Cost Computations
F. Exhibit 5—Comparison with Other Rates
G. Exhibit 6—Rate Design Information

Member Contracts Tariffs

H. Exhibit 7—Wholesale Rate Schedule A

I. Exhibit 8—Wholesale Rate Schedule B
J. Exhibit 9—Wholesale Power Contracts (Members)
K. Exhibit 10—Negotiated Contracts (Members)
L. Exhibit 11—Resource Integration Agreements (Members)

Non-Member Wholesale Power Contracts

M. Exhibit 12—Power Sale Agreement between Deseret Generation & Transmission Co-operative and Department of Water and Power of the City of Los Angeles (DWP No. 10450), dated December 19, 1985
N. Exhibit 13—Firm Power Sales Agreement between Deseret Generation & Transmission Co-operative and the Town of Fredonia, dated September 16, 1986

Non-Member Wholesale Power Contracts

O. Exhibit 14—Firm Power Sales Agreement between Deseret Generation & Transmission Co-operative and Kanab City, Utah, dated March 3, 1987
P. Exhibit 15—Power Sale Agreement between Deseret Generation & Transmission Co-operative and Department of Water and Power of the City of Los Angeles (DWP No. 10242), dated January 23, 1989
Q. Exhibit 16—Second Amendment to Purchase and Sale Agreement between Deseret Generation & Transmission Co-operative and Utah Municipal Power Agency, dated March 21, 1991
R. Exhibit 17—Power Sales Agreement between Deseret Generation & Transmission Co-operative and PacifiCorp, dated October 7, 1992
S. Exhibit 18—1992 Power Sales Agreement between Deseret Generation & Transmission Co-operative and City of Riverside, dated March 31, 1992
T. Exhibit 19—Firm Power Sales Agreement between Deseret Generation & Transmission Co-operative and Colorado City, Arizona, and Hildale, Utah, dated May 28, 1993
U. Exhibit 20—40 Megawatt Power Sale Agreement between Deseret Generation & Transmission Co-operative and City of Anaheim, dated June 9, 1993
V. Exhibit 21—Agreement for the Purchase of Non firm Energy by Koch Power Services, Inc. from Deseret Generation & Transmission Co-operative, dated October 13, 1995
W. Exhibit 22—Power Sale Agreement between Deseret Generation & Transmission Co-operative and PacifiCorp, dated November 8, 1995
X. Exhibit 23—Letter agreement (30 MW) between Deseret Generation & Transmission Co-operative and Salt River Project Agricultural Improvement and Power District, dated May 17, 1996
Y. Exhibit 24—Power Marketing and Resource Management Services Agreement between Deseret Generation & Transmission Co-operative and PacifiCorp, dated July 26, 1996

Non-Member Transmission Contracts

Z. Exhibit 25—Contract for Interconnections and Transmission Service between Deseret Generation & Transmission Co-operative and United States Department of Energy, Western Area Power Administration (Contract No. 2–07–40–P0716), dated November 19, 1982
AA. Exhibit 26—Interconnection and Capacity Exchange Agreement between Colorado-Ute Electric Association, Inc. and Deseret Generation & Transmission Co-operative, dated November 16, 1988

Additional Materials

AB. Exhibit 27—Form of Notice for Publication in the Federal Register
AC. Exhibit 28—Deseret Board Resolutions
AD. Exhibit 29—State Regulatory Approvals from Utah, Arizona, Wyoming
AE. Certificate of Service; Posting/Service List

Deseret states that it has served copies of this filing on each of its members and wholesale customers.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Central Illinois Public Service Company

[Docket No. ER97–138–000]

Take notice that on October 15, 1996, Central Illinois Public Service Company (CIPS) submitted for filing a service agreement, dated October 7, 1996, establishing PECO Energy Company (PECO) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of October 7, 1996 for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon PECO and the Illinois Commerce Commission.

Comment date: November 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. South Carolina Electric & Gas Company

[Docket No. ER97–140–000]

Take notice that on October 16, 1996, South Carolina Electric & Gas Company, tendered for filing proposed wholesale rate changes applicable to requirements customers to reflect increases in SCE&G's cost of service. The proposed changes would increase revenues from the affected customers by approximately $2.021 annually.

SCE&G proposes an effective date of 60 days after the date of filing. Copies of the filing were served on all affected customers and the Public Utility Commission of South Carolina.

Comment date: November 4, 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. 96–27579 Filed 10–25–96; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–2–000, et al.]

PanEnergy Lake Charles Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 22, 1996.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG97–2–000]

On October 3, 1996, PanEnergy Lake Charles Generation, Inc. (''Applicant''), 5400 Westheimer Court, Houston, Texas 77056, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is an indirect, wholly-owned subsidiary of PanEnergy Corp.

Applicant intends to own an undivided 50 percent interest in a gas-fired generating facility with a nominal capacity of 16 megawatts located in the vicinity of Lake Charles, Louisiana.

Comment date: November 12, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. C.C. Pace Energy Services, Ashton Energy Corporation, TexPar Energy, Inc., PacifiCorp Power Marketing, Inc., PacifiCorp Power Marketing, Inc., Westar Electric Marketing, Inc., WPS Power Development, Inc.

[Docket Nos. ER94–1181–009, ER94–1246–009, ER95–62–007, ER95–1096–006, ER95–1096–007, ER96–458–005, ER96–1088–005 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 10, 1996, C.C. Pace Energy Services filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1181–000.

On October 7, 1996, Ashton Energy Corporation filed certain information as required by the Commission's August 10, 1994, order in Docket No. ER94–1246–000.

On October 7, 1996, TexPar Energy, Inc. filed certain information as required by the Commission's December 27, 1994, order in Docket No. ER95–62–000.

On September 23, 1996, PacifiCorp Power Marketing, Inc. filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER95–1096–000.

On October 16, 1996, PacifiCorp Power Marketing, Inc. filed certain information as required by the Commission's February 2, 1996, order in Docket No. ER95–1096–000.

On October 10, 1996, Westar Electric Marketing, Inc. filed certain information as required by the Commission's January 31, 1996, order in Docket No. ER96–458–000.

On October 10, 1996, WPS Power Development, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

3. Strategic Energy Ltd.

[Docket No. ER96–3107–000]

Take notice that on October 17, 1996, Strategic Energy Ltd. tendered for filing an amendment in the above-referenced docket.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Burlington Resources Trading Inc.

[Docket No. ER96–3112–000]

Take notice that on October 15, 1996, Burlington Resources Trading Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that on October 18, 1996, Cinergy Services, Inc. tendered for filing supplemental information to its October 11, 1996, filing in the above-referenced docket.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Manner Technologies, L.L.C.

[Docket No. ER97–135–000]

Take notice that on October 15, 1996, Manner Technologies, L.L.C. tendered for filing a Petition for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Sales of Energy and Capacity.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER97–141–000]

Take notice that on October 15, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Morgan Stanley Capital Group Services under Rate TS.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Non-Replacement Energy Agreement between PJM Companies and Western Power Services, Inc.

[Docket No. ER97–142–000]

Take notice that on October 15, 1996, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Agreement, a Non-Replacement Energy Agreement between Western Power Services, Inc. and Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power and Light Company, Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company. The PJM Companies request an effective date of October 28, 1996.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Non-Replacement Energy Agreement between PJM Companies and Heartland Energy Services

[Docket No. ER97–143–000]

Take notice that on October 15, 1996, the Pennsylvania-New Jersey-Maryland (PJM) Interconnection Association filed, on behalf of the signatories to the PJM Agreement, a Non-Replacement Energy Agreement between Heartland Energy Services and Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power and Light Company, Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company. The PJM Companies request an effective date of October 28, 1996.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. American Hunter Energy Inc.

[Docket No. ER97–144–000]

Take notice that on October 15, 1996, American Hunter Energy Inc. tendered for filing a Petition for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Sales of Energy And Capacity.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER97–145–000]

Take notice that on October 16, 1996, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Western Resources, Inc. for service under its non-firm point-to-point open access service tariff for its operating divisions, Missouri Public Service and WestPlains Energy—Kansas.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER97–146–000]

Take notice that on October 16, 1996, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Service Agreement for Firm Point-to-Point Transmission Service with Sierra Pacific Power Company under PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to Sierra, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company)

[Docket No. ER97–147–000]

Take notice that on October 16, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as GPU Energy), filed Service Agreements between GPU and New York State Electric & Gas Corporation, Koch Power Services., Midcon Power Services, Electric Clearinghouse, Inc., Peco Energy Company—Power Team, Englehard Power Marketing, Inc., USGen Power Services, L.P., Duke/Louis Dreyfus L.L.C., Federal Energy Sales, Inc., InterCoast Power Marketing Company, Rainbow Energy Marketing Corporation, AIG Trading Corporation, LG&E Power Marketing, Inc., Cinergy Services, Inc., Williams Energy Services Company, CL Power Sales Two, L.L.C., Sonat Power Marketing, CNG Power Service Corporation, Public Service Electric & Gas Company, Baltimore Gas & Electric Company, (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the GPU Companies' open access transmission tariff filed on July 9, 1996 in Docket No. OA96–114–000.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 1, 1996, for the Service Agreements. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on the Customers.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Public Service Company

[Docket No. ER97–151–000]

Take notice that on October 11, 1996, Maine Public Service Company, submitted a Quarterly Report of Transactions for the period July 1 through September 30, 1996. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Hampshire

[Docket No. ER97–152–000]

Take notice that on October 15, 1996, Public Service Company of New Hampshire (PSNH), filed changes to the fuel and purchased power adjustment clauses (FPPAC) in FERC Rate Schedule Nos. 133, 134, 135 and 142, the wholesale arrangements between PSNH and its three municipal wholesale electric customers (Town of Ashland (Electric Light Department); New Hampton Village Precinct; and Town of Wolfeboro (Municipal Electric Department) and the New Hampshire Electric Cooperative.

PSNH states that the proposed changes are designed to neutralize the impact on its wholesale customers of the proposed changes in the New Hampshire Retail Competition Pilot Program.

Copies of this filing were served upon each party receiving wholesale power service under the captioned rate schedules. A copy of this filing and supporting materials have also been sent to the New Hampshire Public Utilities Commission.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER97–153–000]

Take notice that on October 10, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Non-firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service with Portland General Electric Company.

Pursuant to 18 CFR 35.11, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreements to become effective July 9, 1996.

A copy of this filing was caused to be served upon Portland General Electric Company as noted in the filing letter.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER97–154–000]

Take notice that on October 15, 1996, Northeast Utilities Service Company tendered for filing a Notice of Termination of The Connecticut Light and Power Company's rate schedule, IND-COMM Generators—NU, FERC Electric Tariff Original Volume No. 1 (IND-Comm Tariff No. 1).

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Company

[Docket No. ER97–155–000]

Take notice that on October 16, 1996, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Western Power Services, Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Service Agreement to become effective October 1, 1996.

A copy of this filing was caused to be served upon Western Power Services, Inc. as noted in the filing letter.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER97–157–000]

Take notice that on October 16, 1996, Delmarva Power & Light Company (Delmarva), tendered for filing a service agreement providing for non-firm point-to-point transmission service from time to time to Coral Power, L.L.C. pursuant to Delmarva's open access transmission tariff. Delmarva asks that the Commission set an effective date for the service agreement of October 14, 1996, the date on which it was executed.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Union Electric Company

[Docket No. ER97–159–000]

Take notice that on October 17, 1996, Union Electric Company (UE), tendered for filing, a Service Agreement for Non-Firm Point-to-Point Transmission Service dated October 14, 1996, between Tennessee Valley Authority (TVA) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to TVA pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER97–160–000]

Take notice that on October 17, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Vitol Gas & Electric L.L.C. (Vitol), pursuant to PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of October 1, 1996.

Copies of the filing have been served upon Vitol and the New Jersey Board of Public Utilities.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power & Light Company

[Docket No. ER97–161–000]

Take notice that on October 17, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with City of St. Cloud, Florida 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 July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER97–162–000]

Take notice that on October 17, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Tennessee Valley Authority 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 July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER97–163–000]

Take notice that on October 17, 1996, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Kissimmee Utility Authority 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 July 9, 1996.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Omaha Public Power District

[Docket No. NJ97–2–000]

Take notice that on October 17, 1996, Omaha Public Power District (OPPD) tendered for filing a Petition for Waiver of Filing Fee and a Petition for Declaratory Order to Implement Open Access Tariff in the above referenced docket. OPPD requests that the Commission issue an order finding that its Open Access Transmission Tariff is an acceptable reciprocity tariff, and thus that OPPD satisfies the public utilities' reciprocity provisions.

Comment date: November 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Deseret Generation & Transmission Co-operative

[Docket No. OA97–3–000]

Take notice that Deseret Generation & Transmission Co-operative (Deseret) on October 11, 1996, tendered for filing a request for a 90-day waiver of Deseret's Open Access and related filing requirements under 18 CFR 35.28, 37.4 and 37.5 of the regulations of the Federal Energy Regulatory Commission (''FERC'' or ''Commission'').

Deseret states that it has served copies of this filing on each of its members and wholesale customers.

Comment date: November 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Montana Power Company

[Docket No. TX97–1–000]

Take notice that on October 10, 1996, Montana Power Company (MPC) filed an application pursuant to Section 211 of the Federal Power Act for the issuance of an order requiring the owners of a Joint Transmission System (the ''JTS'') in eastern Montana and North Dakota (i.e., Western Area Power Administration, Basin Electric Power Cooperative, Heartland Consumer Power District, and Missouri Basin Municipal Power Agency) to transmit power across the JTS from points of interconnection with MPC at Crosspower and Yellowtail, which are located on the Western Interconnection, to delivery points on the Eastern Interconnection for a single charge.

Comment date: November 20, 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. 96–27578 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1991]

City of Bonners Ferry, Idaho; Notice of Intent to Conduct Scoping Meetings and a Site Visit

October 22, 1996.

The Federal Energy Regulatory Commission (FERC) is reviewing a proposal to relicense and continue operating the Moyie River Hydroelectric Project (FERC Project No. 1991). The project is on the Moyie River a tributary to the Kootenai River. The Moyie River Project is located in Boundary County, Idaho near the town of Moyie Springs, Idaho and is partially located on federal lands managed by the Idaho Panhandle National Forest.

The FERC intends to prepare an Environmental Assessment (EA) on the Moyie River Hydroelectric Project in accordance with the National Environmental Policy Act. In the EA, staff will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic and engineering analysis.

A Draft EA will be circulated for review and comment by all interested parties. FERC staff will consider and respond to comments received on the Draft EA in the Final EA. The FERC staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping: FERC staff will conduct two scoping meetings as follows: (1) a scoping meeting oriented towards the public will begin at 7:00 p.m. on November 19 at the City Hall, 7232 Main Street, Bonners Ferry, Idaho and (2) a scoping meeting oriented towards the agencies will begin at 2:00 p.m. on November 20 at City Hall, 7232 Main Street, Idaho.

Interested citizens, non-governmental organizations, local government agencies, state and federal agencies, Indian tribes, and any other interested parties are invited to attend either or both meetings and assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA.

To help focus discussions at the scoping meeting, the FERC will mail a scoping document, outlining subject areas to be addressed in the EA, to all entities on the project's mailing lists. Copies of the scoping document will also be available at the scoping meetings.

Objectives: At the scoping meetings, FERC staff will (1) identify preliminary environmental issues related to the proposed project; (2) attempt to identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures: The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the official record of the Commission proceedings for the relicensing of the Moyie River Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Office of the Secretary, Dockets Room 1A, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 until December 20, 1996. All written correspondence should clearly show the following caption on the first page: Moyie River (No. 1991) Hydroelectric Project.

Site Visit: There will also be a tour of the project on November 20, 1996. Those who wish to attend should plan to meet at City hall in Bonners Ferry, Idaho at 10:00 AM on November 20, 1996 and then drive to the Moyie River Project for the site visit.

FOR FURTHER INFORMATION CONTACT: Tim Looney, FERC, Office of Hydropower Licensing, (202) 219–2852.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27534 Filed 10–25–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 30, 1996, 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 661st Meeting—October 30, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–11575, 001, Akron Hydroelectric Company

CAH–2.
Omitted

CAH–3.
Docket # P–11408, 002, Niagara Mohawk Power Corporation

CAH–4.
Docket # P–5, 028, Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation

CAH–5.
Omitted

CAH–6.
Docket # P–2009, 010, Virginia Electric and Power Company

Consent Agenda—Electric

CAE–1.
Docket # ER96–2927, 000, Boston Edison Company

CAE–2.
Docket # ER96–2984, 000, Sierra Pacific Power Company

CAE–3.
Docket # QF95–328, 001, Ecoelectrica, L.P.

CAE–4.
Docket # ER96–2960, 000, Houston Lighting & Power Company

CAE–5.
Docket # ER96–2790, 000, Union Electric Company

CAE–6.
Omitted

CAE–7.
Docket # ER96–2919, 000, Lykes-Duke/Louis Dreyfus, Ltd.

CAE–8.
ET # ER96–2516, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Co., et al.
Other#S EC96–28, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Company, et al.
EC96–29, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Co., et al.
EL96–69, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Co., et al.

ER96–2668, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Co., et al.
CAE–9.
Docket# ER96–1484, 000, Nantahala Power and Light Company
CAE–10.
Docket# ER96–224, 000, Niagara Mohawk Power Corporation
CAE–11.
Omitted
CAE–12.
Omitted
CAE–13.
Docket# ER96–1626, 001, New England Power Company, Nees Transmission Services, Inc. and Granite State Electric Company, et al.
CAE–14.
Docket# RM96–13, 000, Amendment to filing requirements and ministerial procedures, et al.
CAE–15.
Docket# EL96–48, 000, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
CAE–16.
Omitted
CAE–17.
Docket# EL96–64, 000, Tennessee Power Company
CAE–18.
Docket# EL96–68, 000, Cuero Hydroelectric, Inc. v. the City of Cureo, Texas
Other#S QF96–107, 001, Cuero Hydroelectric, Inc. v. the City of Cureo, Texas
CAE–19.
Omitted
CAE–20.
Docket# OA96–41, 000, Central Electric Cooperative, Inc.
Other#S ER96–3158, 000, Dakota Electric Association
OA96–51, 000, Public Utility District No. 1 of Lewis County, Washington
OA96–87, 000, Delta-Montrose Electric Association
OA96–97, 000, Wake Electric Membership Cooperative
OA96–111, 000, Jones-Onslow Electric Membership Corporation
OA96–132, 000, Concho Valley Electric Cooperative, Inc.
OA96–135, 000, Dakota Electric Association
OA96–144, 000, Lower Valley Power & Light, Inc.
OA96–145, 000, Stamford Electric Cooperative, Inc.
OA96–146, 000, Niobrara Valley Electric Membership Corporation
OA96–147, 000, Licking Rural Electrification, Inc.
OA96–152, 000, Glacier Electric Cooperative, Inc.
OA96–177, 000, Jacksonville Electric Authority
OA96–209, 000, Lee County Electric Cooperative, Inc.
OA96–214, 000, Oklahoma Municipal Power Authority
OA96–220, 000, Florida Keys Electric Cooperative Association, Inc.
OA96–223, 000, Vineland Municipal Electric Utility
OA96–228, 000, City of Dover, Delaware
OA96–230, 000, Incorporated County of Los Alamos, New Mexico
CAE–21.
Omitted

Consent Agenda—Gas and Oil

CAG–1. Omitted
CAG–2.
Docket# RP96–355, 000, Columbia Gas Transmission Corporation
Other#S RP96–356, 000, Columbia Gas Transmission Corporation
CAG–3.
Docket# RP96–378, 000, Texas Eastern Transmission Corporation
CAG–4.
Docket# RP96–383, 000, CNG Transmission Corporation
CAG–5.
Docket# RP96–389, 000, Columbia Gulf Transmission Company
Other#S RP96–390, 000, Columbia Gas Transmission Corporation
CAG–6.
Docket# RP96–392, 000, Black Marlin Pipeline Company
CAG–7.
Docket# RP96–403, 000, ANR Pipeline Company
CAG–8.
Docket# RP96–404, 000, Southern Natural GAS Company
CAG–9.
Docket# RP97–7, 000, Tennessee Gas Pipeline Company
CAG–10.
Docket# RP97–8, 000, Granite State Gas Transmission, Inc.
CAG–11.
Docket# RP97–11, 000, ANR Pipeline Company
CAG–12.
Docket# RP97–12, 000, Transcontinental Gas Pipe Line Corporation
CAG–13.
Docket# RP97–13, 000, EAST Tennessee Natural Gas Company
CAG–14.
Docket# RP97–24, 000, Carnegie Interstate Pipeline Company
CAG–15.
Docket# TM97–2–18, 000, Texas gas Transmission Corporation
CAG–16.
Docket# TM97–2–22, 000, CNG Transmission Corporation
CAG–17.
Docket# RP97–14, 000, Midwestern Gas Transmission Company
CAG–18. Omitted
CAG–19.
Docket# RP96–387, 000, Williams Natural Gas Company
CAG–20.
Docket# RP96–393, 000, Koch Gateway Pipeline Company
CAG–21.
Omitted
CAG–22.
Docket# RP96–397, 000, Transwestern Pipeline Company
Other#s RP96–398, 000, Transwestern Pipeline Company
CAG–23.
Docket# RP96–400, 000, Williams Natural Gas Company
Other#s RP89–183, 064, Williams Natural Gas Company
CAG–24.
Docket# RP96–402, 000, Mississippi River Transmission Corporation
Other#s RP96–402, 001, Mississippi River Transmission Corporation
CAG–25.
Docket# RP97–10, 000, Koch Gateway Pipeline Company
CAG–26.
Docket# RP97–15, 000, Northern Natural Gas Company
CAG–27.
Docket# RP97–16, 000, Northern Natural Gas Company
CAG–28.
Docket# RP97–23, 000, Koch Gateway Pipeline Company
CAG–29.
Omitted
CAG–30.
Omitted
CAG–31.
Omitted
CAG–32.
Omitted
CAG–33.
Omitted
CAG–34.
Docket# PR96–11, 000, Lee 8 Storage Partnership
CAG–35.
Omitted
CAG–36.
Docket# RP95–112, 017, Tennessee Gas Pipeline Company
CAG–37.
Docket# RP95–182, 007, ANR Pipeline Company
Other#s RP95–182, 008, ANR Pipeline Company
CAG–38.
Docket# RP96–195, 000, Tennessee Gas Pipeline Company
CAG–39.
Docket# RP94–423, 006, Texas Gas Transmission Corporation
CAG–40.
Docket# RP96–172, 002, Koch Gateway Pipeline Company
Other#s RP96–172, 003, Koch Gateway Pipeline Company
CAG–41.
Docket# RP96–260, 000, Panhandle Eastern Pipe Line Company
Other#s RP96–260, 001, Panhandle Eastern Pipe Line Company
RP96–260, 002, Panhandle Eastern Pipe Line Company
CAG–42.
Docket# RP96–270, 000, Northern Natural Gas Company
Other#s RP96–270, 001, Northern Natural Gas Company
CAG–43.
Docket# RP96–296, 001, K N Interstate Gas Transmission Company
Other#s RP96–296, 002, K N Interstate Gas Transmission Company
CAG–44.
Docket# RP95–197, 013, Transcontinental Gas Pipe Line Corporation
Other#s CP95–737, 002, Texas Eastern Transmission Corporation and

Transcontinental Gas Pipe Line Corporation
RP96–44, 001, Transcontinental Gas Pipe Line Corporation
CAG–45.
Docket# RP96–320, 002, Koch Gateway Pipeline Company
CAG–46.
Docket# RP96–190, 003, Colorado Interstate Gas Company
CAG–47. Omitted
CAG–48.
Docket# RP96–200, 006, Noram Gas Transmission Company
CAG–49.
Docket# RI74–188, 125, Independent Oil & Gas Association of West Virginia
Other#s RI74–188, 124, Independent Oil & Gas Association of West Virginia
RI75–21, 119, Independent Oil & Gas Association of West Virginia
RI75–21, 120, Independent Oil & Gas Association of West Virginia
CAG–50.
Docket# CP96–29, 001, Natural Gas Pipeline Company of America
CAG–51.
Omitted
CAG–52.
Docket# CP96–684, 000, Interenergy Sheffield Processing Company
CAG–53.
Docket# CP94–339, 000, Midwestern Gas Transmission Company and Tenneco Midwest Natural Gas L.P.
CAG–54.
Docket# CP94–340, 000, East Tennessee Natural Gas Company and Tenneco East Natural Gas L.P.
CAG–55.
Docket# CP96–311, 000, Williams Natural Gas Company
CAG–56.
Docket# CP96–689, 000, Colorado Interstate Gas Company
CAG–57.
Docket# CP96–279, 000, Panhandle Eastern Pipe Line Company
CAG–58.
Docket# CP96–321, 000, El Paso Natural Gas Company
CAG–59.
Docket# TM97–2–16, 000, National Fuel Gas Supply Corporation
Other#s TM97–2–16, 001, National Fuel Gas Supply Corporation

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket # RM96–14, 001, Secondary Market Transactions on Interstate Natural Gas Pipelines
Other#s RP96–352, 000, Pacific Gas & Electric Company and Transwestern Pipeline Company, et al.
RP96–356, 000, Columbia Gas Transmission Corporation
RP96–360, 000, Transcontinental Gas Pipe Line Corporation
RP96–369, 000, Brooklyn Union Gas Company
RP96–371, 000, Central Hudson Gas & Electric Corporation
RP96–372, 000, Mountaineer Gas Company
RP96–382, 000, Orange and Rockland Utilities, Inc.
RM96–14, 002, Secondary Market Transactions on Interstate Natural Gas Pipelines
RP96–353, 000, National Fuel Gas Distribution Corporation
RP96–356, 000, Columbia Gas Transmission Corporation
RP96–368, 000, Washington Gas Light Company
RP96–370, 000, Kern River Gas Transmission Company
RP96–373, 000, Boston Gas Company
RP96–379, 000, Arizona Public Service Company
Order on Pilot Program Applications.

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: October 23, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–27742 Filed 10–24–96; 2:12 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5641–4]

Interim Guidance for Implementation of the Drinking Water State Revolving Loan Fund; Notice of Availability and Request for Comment

ACTION: Notice of availability for comment.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on interim guidance for implementation of the Drinking Water State Revolving Fund (DWSRF).

The DWSRF program was established by the reauthorized Safe Drinking Water Act (SDWA), signed by President Clinton on August 6, 1996. The SDWA authorizes $9.6 billion for the DWSRF program from fiscal year 1994 through fiscal year 2003. For fiscal year 1997, EPA's budget includes $1.275 billion for the DWSRF program. On a national level, the Office of Water is responsible for implementing the SDWA requirements, including the DWSRF program.

The DWSRF is authorized as a State loan program, to be capitalized in large part by Federal contributions. Loans from State capitalization grants must be made to protect public health and to achieve or maintain SDWA compliance. States have flexibility to tailor DWSRF programs to address local needs as long as the programs meet the minimum Federal requirements in the law. States are required to develop a priority list of projects, subject to public review. States must describe how their programs will prioritize use of DWSRF project funds.

The SDWA amendments establish a strong emphasis on preventing contamination through source water protection and enhanced water system management. The amendments also emphasize the needs of small water systems. States may use portions of their DWSRF capitalization grants to work toward attaining some of these goals and are required to reserve portions of their grants for small water systems.

The interim guidance for implementation of the DWSRF has been issued so that capitalization grants can be awarded to States as soon as possible. EPA is seeking comment on all aspects of the guidance. To collect further comment, EPA will hold a public meeting on November 12, 1996, at the EPA Auditorium in Washington, DC.

DATES: EPA will accept public comment on this guidance until November 27, 1996.

ADDRESSES: Copies of the Interim Guidance for Implementation of the DWSRF are available from the Safe Drinking Water Act Hotline, telephone (800) 426–4791. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street, SW, Washington, DC 20460. A single copy of this document can be picked up at the Resource Center I 2615 Mall at the address above. The Center is open from 8:30 a.m. until 5 p.m. Monday through Friday. The DWSRF Guidance may also be obtained from the EPA Web Site at the URL address ''http://www.epa.gov/OW/OGWDW''. For further information on the public meeting to be held November 12, 1996, contact the Safe Drinking Water Act Hotline.

Send written comments on the DWSRF guidance to Comment Clerk; Water Docket MC–4101; Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Commentators are requested to submit any reference cited in their comments. Commentators are also requested to submit an original and 3 copies of their written comments and enclosures. Commentators who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by November 27, 1996. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Act Hotline, telephone (800) 426–4791. For technical inquiries, contact Jamie Bourne, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water, (4606), U.S. EPA, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–5557.

Dated: October 18, 1996.

Cynthia C. Dougherty,

Director, Office of Groundwater and Drinking Water.

[FR Doc. 96–27582 Filed 10–25–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Emergency Review and Approval

October 21, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Please Note: The Commission is seeking emergency approval for these information collections by November 8, 1996 under the provisions of 5 CFR Section 1320.13.

DATES: Written comments should be submitted on or before November 5, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov. You can receive copies of the proposed forms via fax by calling 202–418–0177 from the handset of a fax machine and entering the document retrieval numbers indicated below.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Application for Station Authorization in the Microwave Services (Parts 74 and 101).

Form No.: FCC 415/415T.

Type of Review: Emergency Collection.

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

Number of Respondents: 20,000.

Estimated Time Per Response: 7 hours.

Total Annual Burden: 140,000 hours.

Total Annual Cost: The application filing fees vary between $45–$225 per applicant depending on which authorization is being requested.

Needs and Uses: This collection of information is required by the Telecommunications Act, 47 U.S.C. 308, and Commission Rules 1.922, 1.924, 1.926, 73.3500, 101.13, and 101.15. As a result of WT Docket No. 94–148, FCC 96–51, adopted February 8, 1996 and released February 29, 1996, Private Operational Fixed Microwave Services and Common Carrier services were combined under a new rule Part 101, effective August 1, 1996. FCC Form 415 was developed so that one common application form would be used and to streamline filing and processing as specified in the new Part 101. This combined form will replace FCC Forms 402 and 494, and Forms 313, 430 and 703 for Microwave services. Once the new form is implemented, a public notice will be released announcing the obsoletion of these forms.

FCC Form 415 is used to apply, or to amend a pending application, for an authorization to operate a radio station in 47 CFR Part 101, Fixed Microwave Services, and 47 CFR Part 74, Subpart E, Aural Broadcast Auxiliary Stations and Subpart F, Television Broadcast Auxiliary Stations. Purposes of filing include New, Modification, Renewal, Reinstatement, and Amend a Pending Application. Private Operational Fixed and Broadcast applicants may use it to apply for a full assignment of a radio station authorization and a Transfer of Control. Private and Common Carrier applicants may use it to apply for a Minor Modification and to request authorization of a developmental station. Common Carrier applicants may request authorization to convert from Private to Common Carrier.

If certain conditions are met, applicants may self-certify and operate under a Conditional Temporary Authorization (FCC 415T) which is included in the FCC 415 application package.

Fax Document Retrieval Number: 000415.

OMB Approval Number: New Collection.

Title: Application for Electronic Renewal of Wireless Radio Services Authorizations.

Form No.: FCC Form 900.

Type of Review: Emergency Collection.

Respondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Federal Government; Not-for-profit institutions.

Number of Respondents: 32,355.

Estimated Time Per Response: 10 minutes.

Total Annual Burden: 5,852 hours.

Total Annual Cost: The application filing fees vary between $0–$90 per applicant, and the regulatory fees vary between $0–$35 (average) depending on which license is being renewed.

Needs and Uses: The ''Generic'' renewal application may be filed in lieu of the FCC Form 313R, 402R, 405, 405A, 452R, 574R, and 610R, to file electronically for renewal of Wireless Radio Services Authorizations. Concurrent with renewal applicants may also request a change of licensee name (with no change in corporate structure, ownership or control), change of mailing address, change the name of their ship, add an official ship number, reinstate a Land Mobile License, and notify the Commission of a change in the number of mobiles/pagers for a Land Mobile License. Applicants desiring to file for renewal manually will do so by filing the existing forms for the service in which they are licensed.

Fax Document Retrieval Number: 000900.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–27526 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order to Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Morgan Media, Inc. Licensee of WAUB(AM).	Auburn, New York.	96–209

(Regarding the silent status of Station WAUB(AM))

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Morgan Media, Inc. has been directed to show cause why the license for Station WAUB(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Morgan Media, Inc. has the capability and intent to expeditiously resume the broadcast operations of WAUB(AM) consistent with the Commission's Rules.

2. To determine whether Morgan Media, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Morgan Media, Inc. is qualified to be and remain the licensee of Station WAUB(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–27525 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

Licensee Order to Show Cause

The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Twenty-One Sound Communications, Inc. Licensee of KFPS(AM).	Salem, Missouri	96–210

(Regarding the silent status of Station KFPS(AM))

Pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Twenty-One Sound Communications, Inc. has been directed to show cause why the license for Station KFPS(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Twenty-One Sound Communications, Inc. has the capability and intent to expeditiously resume the broadcast operations of KFPS(AM) consistent with the Commission's Rules.

2. To determine whether Twenty-One Sound Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commissions Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Twenty-One Sound Communications, Inc. is qualified to be and remain the licensee of Station KFPS(AM).

A copy of the complete Show Cause Order and Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 96–27524 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–P

FCC to Hold Open Commission Meeting Tuesday, October 29, 1996

October 22, 1996—G.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, October 29, 1996, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M. Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	*Title:* Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended (CC Docket No. 96–61). *Summary:* The Commission will consider certain issues raised in the Notice of Proposed Rule Making.
2	Wireless Telecommunications	*Title:* Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation (WT Docket No. 95–157, RM–8643). *Summary:* The Commission will consider action concerning the relocation of microwave incumbents in the 2 GHz band.
3	International	*Title:* Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures (IB Docket No. 95–117). *Summary:* The Commission will consider action concerning its satellite policy rules to eliminate and streamline various application and licensing procedures, reduce reporting requirements for a number of services, and consolidate various forms.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and video tapes of this meeting can be purchased

from Telspan International at (301)731–5355. This meeting can be viewed over ''George Mason University's Capitol Connection,'' telephone (703) 993–3100. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–27570 Filed 10–25–96; 8:45 am]

BILLING CODE 6712–01–M

[DA 96–1724]

Released: October 17, 1996.

Mass Media Bureau Announces Commencement of Sixty (60) Day Period for Filing ITFS Modifications and Amendments Seeking to Co-Locate Facilities with Wireless Cable Operations

1. Commencing October 24, 1996, and continuing to and including December 23, 1996, the Commission will permit the filing of modification applications and amendments to pending applications in the Instructional Television Fixed Service (ITFS) proposing to co-locate with an authorized wireless cable facility.

2. This 60 day co-location filing period is not for the filing of new station applications or modification applications for additional channels. Amendments and modifications may not involve a technical conflict with existing operation(s) or with application(s) filed prior to this sixty (60) day filing period. Applications for upgrades in facilities unrelated to proposed co-location with a wireless cable facility will not be accepted. In addition, curative amendments to otherwise defective applications will not be accepted for filing. Changes in facilities which fail to comply with the limitations set forth in this Public Notice will not be accepted for filing.

3. On March 28, 1996, the Commission completed its auction of authorizations to provide single channel and multichannel Multipoint Distribution Service (collectively referred to as MDS) in 493 Basic Trading Areas (BTAs) and BTA-like areas. Many BTA authorization holders and incumbent wireless cable operators lease excess channel capacity from the ITFS licensees in the same service area, pursuant to Section 74.931(e) of the Commission's Rules. The purpose of this Public Notice is to facilitate marketwide settlements and expedite the development of wireless cable services by permitting ITFS applicants and licensees to modify their applications or facilities to specify co-location with the facilities of a wireless cable operator which leases its ITFS channels. Therefore, amendments to pending applications, which were timely filed and substantially complete at the time of filing, and modification applications for changes in ITFS facilities will be accepted during the specified sixty (60) day filing period, provided that co-location with a wireless cable facility is proposed and the ITFS applicant or licensee has an executed channel lease agreement with the wireless cable operator. Applicants and licensees may also propose any changes in technical facilities in an effort to replicate those of the co-located wireless cable facility.

4. Applicants are requested to specify in an exhibit their protected service area (PSA) as follows. First, ITFS entities who lease excess channel capacity to an incumbent MDS operator (one authorized or proposed on or before September 15, 1995) should so state and specify the protected service area of the co-located wireless cable system, a fixed circle with a radius of 35 miles. Specifically, applicants are requested to provide the geographic latitude and longitude of the center of the PSA, which will not necessarily coincide with the proposed transmitting antenna site coordinates. Secondly, ITFS entities who lease excess capacity to a BTA holder should so state. In such cases the ITFS PSA will be a circular 35-mile protected service area centered at the transmitting antenna coordinates of the co-located MDS station, i.e., the site coordinates proposed in the application. An applicant's correct specification of its intended service area will facilitate the processing of the application and insure appropriate interference protection.

5. To further facilitate the orderly and expeditious processing of these submissions, applicants and licensees filing amendments and modifications pursuant to this Public Notice are requested to use a completed ''cover sheet,'' identical to the cover sheet form attached to this Public Notice. In addition, all modification applications and amendments to pending applications must be substantially complete when tendered for filing.

6. All filings in response to this Public Notice must be filed with the Secretary's Office, Federal Communications Commission, 1919 M Street, Room 222, Washington, D.C. 20054. See 47 CFR 0.401(a). Mailed modification applications and amendments to pending applications must be received by the Commission no later than December 23, 1996. Hand-carried or courier-delivered ITFS filings can be delivered daily during the sixty day filing period at the Secretary's Office from 8:00 a.m. to 5:30 p.m. Submissions tendered after 5:30 p.m. on Monday, December 23, 1996, will not be accepted. Applicants are required to submit an original and two duplicate copies of the filing. To further facilitate the initial processing of these filings, all applicants are requested to enclose in a single envelope the original and duplicate copies of the filing, with each duplicate copy clearly denoted as such by the applicant. Where more than one application or amendment is being filed, separate envelopes enclosing the individual filings (i.e., an original and two copies) can be mailed in a single package. The Secretary's Office will provide date stamped copies of hand delivered filings upon request.

7. Modification applications and amendments which do not comply with the limitations set forth in this Public Notice, or which are otherwise found to be defective, will be rejected and returned to the applicant.

8. For further information concerning this sixty (60) day filing period, contact Charles P. Gratch or Joyce L. Bernstein, Video Services Division, Mass Media Bureau at (202) 418–1610.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

BILLING CODE 6712–01–P

COVER SHEET

ITFS SIXTY (60) DAY FILING PERIOD TO CO-LOCATE WITH WIRELESS CABLE OPERATIONS

(October 24, 1996 to December 23, 1996)

Call Sign:_____ (If licensed station)

File No:_____ (If application currently pending)

Applicant:_____

Check Yes or No to questions 1, 2 and 3		Yes	No
1)	Is this filing in response to the October 17, 1996, Public Notice of the commencement of a sixty day period for filing co-location modifications and amendments?	___	___
2)	Does this filing propose to co-locate with and replicate the facilities of a wireless cable operator?	___	___
3)	Do you have a signed lease agreement with the co-located wireless cable operator?	___	___

* If a current lease agreement is not on file with the Commission, it must be submitted along with the amendment or modification being tendered for filing.

* List on the following line the name and call sign or file number of the MDS station or pending MDS application utilized by the wireless cable operator with which you propose to co-locate. (If the wireless cable operator is not the MDS licensee or applicant, include the operator's name.)

MDS Licensee or Applicant **Call sign/File No.**

_____

Wireless cable operator

_____

[FR Doc. 96–27568 Filed 10–25–96; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, October 22, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and personnel activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), Chairman Ricki Helfer, and Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8) and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8) and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: October 22, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–27780 Filed 10–25–96; 9:17 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 202–011375–026.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Nedlloyd Lijnen BV
Cho Yang Shipping Co. Ltd.
Hapag Lloyd AG
Sea-Land Service, Inc.
Medierranean Shipping Co, S.A.
A.P. Moller-Maersk Line
DSR–Senator Lines
POL–Atlantic
P&O Containers Limited
Orient Overseas Container Line (UK) Ltd.
Nippon Yusen Kaisha
Transportacion Maritima Mexicana, S.A. de C.V.
Tecomar S.A. de C.V.
Neptune Orient Lines Ltd.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.

Synposis: The proposed amendment provides that the bunker adjustment/interim fuel participating factors applicable to cargo moving under service contracts shall be assessed at the tariff level in effect at the time of each shipment.

By Order of the Federal Maritime Commission.

Dated: October 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–27554 Filed 10–25–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gary J. Cinotto, Frontenac, Kansas; to acquire an additional 12.5 percent, for a total of 37.1 percent, of the voting shares of Miners Bancshares, Inc., Frontenac, Kansas, and thereby indirectly acquire Miners State Bank of Frontenac, Frontenac, Kansas.

Board of Governors of the Federal Reserve System, October 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27503 Filed 10–25–96; 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 21, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to merge with Jefferson Bancorp, Inc., Miami Beach, Florida, and thereby indirectly acquire Jefferson Bank of Florida, Miami Beach, Florida.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First SCK Financial Corporation, Anthony, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Anthony, Anthony, Kansas.

Board of Governors of the Federal Reserve System, October 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27504 Filed 10–95–96; 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 November 12, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Fulton Financial Corporation, Lancaster, Pennsylvania; to engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–27505 Filed 10–25–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 942–3036]

AAF–McQuay, Inc. d/b/a AAF International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval would, among other things, require the Baltimore-based manufacturer of filters for forced-air heating systems to possess substantiation for all performance claims, health or other benefits claims, and efficacy claims made for any air cleaning product in the future. The agreement settles allegations that the respondent made misleading claims regarding allergy relief, airborne particle removal, and cost benefits when its filters are used in place of standard forced air system filters, in advertisements for AAF's Dirt Demon and ElectroKlean brand filters.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

John Mendenhall, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

Brinley Williams, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment (AAF-McQuay, Inc.)

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from AAF-McQuay, Inc., d/b/a AAF International (AAF). AAF manufactures and sells air filters for use in residential heating systems, under the brand names ElectroKlean and Dirt Demon, among others. The proposed consent order has been placed on the public record for sixty(60) days to receive the comments of interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that AAF deceptively advertised that (1) use of the Dirt Demon or ElctroKlean filter will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions; (2) the ElectroKlean and Dirt Demon remove 95% of the airborne contaminants from the air people breathe under household conditions; (3) the Dirt Demon traps 95% of the lint, dust and pollen from the household air passing through it; and (4) the Dirt Demon is six times as efficient at removing pollutants as a standard air filter. The complaint charges that AAF lacked substantiation for these claims.

The complaint also charges that AAF lacked substantiation for claims that (1) the addition of Intersept antimicrobial to the ElectroKlean makes air cleaner and healthier than it otherwise would be under household living conditions; (2) the addition of Intersept antimicrobial to the ElectroKlean inhibits the growth of microbes in household heating and cooling systems; and (3) the addition of Intersept antimicrobial to the Dirt Demon removes the filter as a potential source of contamination of household air.

The complaint also charges that AAF represented the Dirt Demon to be a HEPA (High Efficiency Particulate Air) filter when, according to industry standards, it is not.

The proposed order contains provisions designed to prevent misrepresentations related to these specific matters and others. Paragraph I of the proposed order prohibits AAF from making any representation regarding the performance, health of other benefits, or efficacy of any air cleaning product (which is defined) unless it can substantiate the claims with competent and reliable evidence. If the representation states or implies a level of performance under household conditions, then the evidence that substantiates the representation must either be related to such conditions or must have been extrapolated to household conditions by generally accepted procedures.

Paragraph II prohibits AAF from misrepresenting that any air filter for insertion into household central heating systems is a HEPA (High Efficiency Particulate Air) filter.

Paragraph III, IV, V, and VI are compliance and reporting provisions that require AAF to maintain for five (5) years the records on which it relies to substantiate any representation covered by the order, to provide copies of the order to certain employees, to notify the Commission in the event of changes in the corporation that may affect compliance obligations arising out of the order, and to file a compliance report with the Commission within sixty (60) days after the order becomes final.

Paragraph VII provides that the order will terminate automatically twenty years from the date it becomes final unless the Commission has brought an action in federal court alleging a violation of the order. In that case, the order will terminate twenty years from the date that the federal court action is filed.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–27574 Filed 10–25–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3036]

Filtration Manufacturing, Inc.; Gary L. Sewell; Horace R. Allen; Brandon R. Clausen; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Mobile, Alabama-based manufacturer of filters for forced-air heating systems and other respondents to possess substantiation for all performance claims, health or other benefits claims, and efficacy claims made for any air cleaning product in the future. The agreement settles allegations that the respondents made misleading claims regarding allergy relief, airborne particle removal, and cost benefits when their filters are used in place of standard forced air system filters, in advertisements for Filtration Manufacturing's Allergy 2000 electrostatic air filter.

DATES: Comments must be received on or before December 27, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

John Mendenhall, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

Brinley Williams, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment (Filtration Manufacturing, Inc.)

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Filtration Manufacturing, Inc., a corporation (FMI), and Gary L. Savell (Savell), Horace R. Allen (Allen) and Brandon R. Clausen (Clausen). FMI manufactures and sells air filters for use in residential heating systems, under the brand name Allergy 2000, among others. The proposed consent order has been placed on the public record for sixty (60) days to receive the comments of interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that FMI, deceptively advertised that (1) use of the Allergy 2000 filter will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions; (2) use of the Allergy 2000 will substantially reduce the amount of disease-causing germs in the air people breathe under household living conditions; (3) use of the Allergy 2000 will substantially reduce the incidence of disease caused by germs in the air people breathe under household living conditions; (4) people who use the Allergy 2000 in their homes will be healthier and have fewer illnesses than they would if they used a conventional filter; and, (5) the Allergy 2000 removes substantially all of the airborne contaminants, including allergens, from the air people breathe under the household living conditions. The complaint charges that FMI lacked substantiation for these claims. The complaint charges that these claims were made through advertisements and promotional materials and through use of the trade name ''Allergy 2000.''

In addition to the health-related claims listed above, the complaint also charges that FMI deceptively advertised that consumers would have lower utility bills if they replaced conventional filters with the Allergy 2000. The complaint charges that FMI lacked substantiation for this claim, too.

The complaint charges that Savell, Allen and Clausen formulated and controlled the affairs of FMI, including the acts and practices charged in the complaint.

The proposed order contains provisions designed to prevent misrepresentations related to these specific matters and others. Paragraph I of the proposed order prohibits FMI, Savell, Allen and Clausen (the respondents) from making any representation regarding the performance, health or other benefits, or efficacy of any air cleaning product (which is defined) unless they can substantiate the claims with competent and reliable evidence. If the representation states or implies a level of performance under household conditions, then the evidence that substantiates the representation must either be related to such conditions or must have been extrapolated to household conditions by generally accepted procedures.

Paragraph II prohibits the respondents from using the trade name Allergy 2000 or any other name that represents that the product will relieve allergy symptoms unless they can substantiate the representation.

Paragraphs III, IV, VI, and VII are compliance and reporting provisions that require the respondents to maintain for five (5) years the records on which they rely to substantiate any representation covered by the order, to provide copies of the order to certain employees of FMI, to notify the Commission in the event of changes in FMI that may affect compliance obligations arising out of the order, and to file a compliance report with the Commission within sixty (60) days after the order becomes final. Paragraph V requires Savell, Allen and Clausen to notify the Commission of any change in their business affiliation.

Paragraph VIII provides that the order will terminate automatically twenty years from the date it becomes final unless the Commission has brought an aciton in federal court alleging a violation of the order. In that case, the order will terminate twenty years from the date that the federal court action is filed.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–27575 Filed 10–25–96; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

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) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates:

9 a.m.–5 p.m., November 13, 1996
9 a.m.–5:05 p.m., November 14, 1996

Place: Eagle Conference Center, 2844 Mack Road, Fairfield, Ohio 45014, telephone 513/874–8850, FAX 513/874–8581.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. The purpose of this meeting is to provide a forum for community and labor interaction and serve as a vehicle for

community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: Presentations from the National Center for Environmental Health (NCEH) regarding current activities; the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies. Additional items include: the National Academy of Sciences review of the Fernald Dosimetry Reconstruction Project and an overview of the Fernald Medical Monitoring Program.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Steven A. Adams or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: October 22, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–27547 Filed 10–25–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Interim Application and Planning Document.

OMB No.: New Collection.

Description: This legislatively-mandated plan serves as the agreement between the grantee and the Federal government as to how child care funds from former Title IV–A Aid to Families with Dependent Children (AFDC) program will be operated under the new integrated Child Care and Development Fund. The plans provide assurances that the funds will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions or guidelines issued by ACF.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interim Application and Planning Document (States)	51	1	60	1,020
Interim Application and Planning Document (Tribes)	226	1	20	4,520
Estimated Total Annual Burden Hours				5,540

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 21, 1996.

Douglas J. Godesky,

Reports Clearance Officer.

[FR Doc. 96–27523 Filed 10–25–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0381]

Cochlear Corp.; Premarket Approval of New Indication for Use for the Nucleus 22-Channel Cochlear Implant.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Cochlear Corp., Englewood, CO for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of a new indication for use for the Nucleus 22-Channel Cochlear Implant. After reviewing the recommendation of the Ear, Nose, and Throat Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 21, 1995, of the approval of the application.

DATES: Petitions for administrative review by November 27, 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: Marilyn N. Flack, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On August 8, 1992, Cochlear Corp., Englewood, CO 80112, submitted to CDRH a supplemental application for premarket approval of an expanded indication for use for the Nucleus 22-Channel Cochlear Implant. The device was originally approved in 1985 for use in adults who demonstrated postlinguistic, bilateral, sensorineural hearing loss, and obtained little or no benefit from conventional amplification. It was approved in 1990 for use in children who demonstrated bilateral, profound, sensorineural hearing loss, and obtained little or no benefit from conventional amplification or vibrotactile hearing aids. The expanded indication for use now includes patients, 18 years and older, who have bilateral, postlinguistic,

sensorineural hearing impairment, and obtain limited benefit from appropriate binaural hearing aids. Limited benefit from amplification is defined by test scores of 30 percent or below in the best-aided (i.e., testing on left ear, right ear, and binaurally to determine communication ability obtained in that particular hearing-aided condition) listening condition on tape recorded tests of open set sentence recognition. These patients typically have low frequency residual hearing in the moderate to profound range and profound (greater than equal to 90 dBHL (decibels in hearing level)) hearing loss in the mid to high speech frequencies.

On April 20, 1995, the Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the supplemental application. On August 21, 1995, CDRH approved the supplemental 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, 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 the 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 27, 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. 96–27613 Filed 10–25–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. November 20, 1996, 8:30 a.m., Best Western, Grand Ballroom, 1251 West Montgomery Ave., Rockville, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; Richard E. Geyer, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1764, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Veterinary Medicine Advisory Committee, code 12546. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 13, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will continue the discussion about the status of the sometribove Post-Approval Monitoring Program. FDA approved sometribove, a recombinant bovine somatotropin, on November 12, 1993 (58 FR 55946), and the product, Posilac®, began commercial distribution on February 4, 1994.

FDA public advisory committee meetings 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. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open 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, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., 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.

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 21, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–27612 Filed 10–25–96; 8:45 am]

BILLING CODE 4160–01–F

[FDA 225–96–2006]

Memorandum of Understanding Between the Food and Drug Administration and the Agricultural Marketing Service, United States Department of Agriculture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Agricultural Marketing Service, United States Department of Agriculture (USDA). The purpose of the MOU is to clarify and delineate the responsibilities of each agency with respect to the National Laboratory Accreditation Program (NLAP). Each agency has specific responsibilities under the NLAP that are mandated by the 1990 Food, Agriculture, Conservation, and Trade Act (7 U.S.C. 138–138i).

DATES: The agreement became effective May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Marion G. Clower, Center for Food Safety and Applied Nutrition (HFS–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4036.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of understanding.

Memorandum of Understanding Between the Food and Drug Administration and the Agricultural Marketing Service, USDA

I. Title: National Laboratory Accreditation Program

II. Purpose

This agreement between the Food and Drug Administration (FDA) and Agricultural Marketing Service (AMS) of the United States Department of Agriculture (USDA) clarifies and delineates the responsibilities of each agency with respect to the National Laboratory Accreditation Program (NLAP). Each agency has specific responsibilities under the NLAP that are mandated by the 1990 Food, Agriculture, Conservation, and Trade (FACT) Act (7 U.S.C. 138–138i).

III. Background

The FACT Act of 1990, approved November 28, 1990, authorizes the creation of the NLAP. Under NLAP, laboratories that request accreditation and conduct pesticide residue analysis of agricultural products for human consumption, or that make claims to the public or buyers of agricultural products concerning pesticide residue levels on agricultural products, shall be determined to meet certain minimum quality and reliability standards. The Secretary of Agriculture is charged with administering the NLAP.

The FACT Act requires the Secretary of Health and Human Services, after consultation with the Secretary of Agriculture and the Administrator of the Environmental Protection Agency (EPA), to establish, through regulations, standards for the NLAP. The Secretary of Health and Human Services is also required to approve accrediting bodies, and oversee and review the performance of such accrediting bodies, to act on behalf of the Secretary of Agriculture in implementing the certification and quality assurance programs. FDA will carry out these responsibilities under delegation from the Secretary of Health and Human Services. The Secretary of Agriculture is required to issue certificates of accreditation to laboratories who meet the requirements for the accreditation program, provide proficiency test samples to laboratories that apply for accreditation, establish a fee schedule, collect fees from the private laboratories involved in NLAP, and promulgate regulations to carry out the NLAP.

IV. Substance of Agreement

It is understood and agreed between the parties as follows:

A. FDA Responsibilities:

1. Promulgate regulations establishing standards for NLAP, after consultation with AMS and EPA (7 U.S.C. 138a(b)), including:
   a. standards applicable to laboratories;
   b. qualifications of laboratory personnel; and
   c. standards and procedures for quality assurance programs.
2. Approve accrediting bodies (7 U.S.C. 138a(c)), which may include:
   a. state agencies; and
   b. private non-profit organizations.

3. In making such approvals (7 U.S.C. 138a(c)(1) and (2)):
a. oversee and review performance of any accrediting body to ensure that the accrediting body is in compliance with requirements of the certification program; and
b. obtain all records and materials necessary for the oversight and review in (a) from accrediting bodies and certified laboratories.

B. AMS Responsibilities:
1. Administer the NLAP (7 U.S.C. 138a and 138b):
a. recommend accrediting body(ies):
b. receive laboratory applications;
c. issue certificates of accreditation to qualified laboratories;
d. perform on-site audits;
e. deny or revoke laboratory accreditation; and
f. issue ''limited'' accreditation to laboratories for specific fields of testing.
2. Provide performance evaluation test samples (7 U.S.C. 138c):
a. to any laboratory that has applied for accreditation;
b. at least twice yearly; and
c. evaluate results.
3. Promulgate regulations to carry out NLAP (7 U.S.C. 138h).
4. Establish a fee schedule for NLAP and collect fees from laboratories (7 U.S.C. 138f).
5. Prepare guidelines for reporting on results of analysis showing pesticide chemical residues to AMS, FDA, and the owner of the food (7 U.S.C. 138e).
6. Provide results of evaluations of laboratories conducted under NLAP to FDA, and the public, upon request (7 U.S.C. 138g).
7. Prepare a procedural manual for the NLAP.

C. FDA and AMS Cooperative Responsibilities:
1. Prepare written responses from comments received in rulemaking.
2. Receive reports on analyses containing any findings of chemical pesticide residue (7 U.S.C. 138e).

V. Liaison Officers

For AMS: Chief, Technical Services Branch, Science and Technology Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, rm. 3517, South Building, Washington, DC 20090–6456.

For FDA: Director, Division of Pesticides and Industrial Chemicals, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., Washington, DC 20204.

VI. Basis of Cooperation

This Memorandum of Understanding describes in general terms the basis on which the parties concerned will cooperate, and does not constitute a financial obligation to serve as a basis for expenditures. Any and all expenditures from Federal funds in USDA made in conformity with the plans outlined in the Memorandum of Understanding must be in accord with Department rules and regulations and in each instance based upon appropriate finance papers. Expenditures made by FDA will be in accord with its rules and regulations.

The responsibilities assumed by the cooperating parties under this Memorandum of Understanding are contingent upon funds being available from which expenditures legally may be met.

VII. Period of Agreement

This agreement becomes effective upon acceptance by both parties and shall remain in effect indefinitely. This agreement may be modified in writing by mutual consent or terminated in writing by either party upon a sixty (60) day advance notice to the other.

VIII. Acceptance

Approved and Accepted for the Agricultural Marketing Service, USDA
By: Kenneth C. Clayton
Title: Deputy Administrator, Marketing Programs
Date: May 31, 1996

Approved and Accepted for the Food and Drug Administration
By: Fred R. Shank,
Title: Director, Center for Food Safety and Applied Nutrition
Date: May 31, 1996

Dated: October 18, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–27592 Filed 10–25–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3950–N–06]

Announcement of OMB Approval Number; Notice of Application—Foreclosure Commissioners

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of application—foreclosure commissioners; announcement of the Office of Management and Budget (OMB) approval number.

SUMMARY: The purpose of this document is to announce the OMB approval number for the information collection requirements in the notice of application for foreclosure commissioners applying under the Single Family Mortgage Foreclosure Act of 1994.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–0080. A telecommunications device for the hearing impaired (TTY) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: On November 27, 1995 (60 FR 58442), the Department published in the Federal Register, a notice that requested applications from parties who seek approval to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994 (the ''Act''), 12 U.S.C. 3751–3768. The document—titled, ''Notice of Application—Foreclosure Commissioners''—indicated that information collection requirements contained in the notice had been submitted to the Office of Management and Budget for emergency review and approval under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and that when approved, the OMB control number would be announced by separate notice in the Federal Register. Notice of the emergency OMB approval was published on December 7, 1995 (60 FR 62876).

On December 20, 1995 (60 FR 65662) and May 28, 1996 (61 FR 26526), HUD published notices soliciting comments for the purpose of obtaining regular, non-emergency OMB approval for the Notice of Application—Foreclosure Commissioners.

This present document provides notice of the regular, non-emergency OMB approval number. Accordingly, the control number approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for the Notice of Application—Foreclosure Commissioners is 2510–0012. This approval number expires on July 31, 1999. 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.

For the convenience of applicants and other interested parties, this notice provides the information collection requirements of the Notice of Application—Foreclosure Commissioners, which are as follows:

The requested information will be used to determine if an applicant is responsible, financially sound, and competent to conduct a foreclosure. Each party submitting an application will be notified if its application has been accepted or rejected. All parties whose applications are accepted will be placed on a list of designated commissioners approved to act in a specific geographic area. When HUD determines that a particular mortgage should be foreclosed under the Act, the case will be referred to a designated foreclosure commissioner for foreclosure. Designation as a

commissioner, however, does not necessarily provide any assurance that all commissioners so designated will subsequently have cases referred by HUD for foreclosure. Also, in some States HUD may decide to continue to foreclose under State law or other Federal law.

Each party seeking designation as a foreclosure commissioner must submit the current information, as listed below, to HUD's Field Assistant General Counsel serving the geographic area in which the party proposes to serve as commissioner.

Current Information to be Submitted

1. Name.
2. Business address.
3. Geographic area in which the applicant wishes to conduct foreclosures. (List only States or areas in States in which the applicant is a resident or is duly authorized to transact business.)
4. If the applicant is not a natural person, the names and business addresses of the people who would actually perform the commissioner's duties.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities which would qualify the applicant to serve as a foreclosure commissioner.
6. Evidence of the applicant's financial responsibility.

Any party that has been designated as a foreclosure commissioner for HUD-held multifamily mortgages may submit a letter to the appropriate Field Assistant General Counsel requesting designation as a foreclosure commissioner for single family mortgages. This letter of interest would be acceptable in lieu of the preceding information, unless any of the information requires updating.

In addition, 5 CFR § 1320.8(b)(3) requires that each collection of information informs and provides to the potential persons to whom the information collection is addressed the following:

(i) *Reason for the information collection.* The information is being collected for HUD's selection of foreclosure commissioners who will satisfy the statutory requirements [Section 3754(c) of the Single Family Mortgage Foreclosure Act of 1994 (''Act'')] to be ''responsible, financially sound and competent to conduct a foreclosure.''

(ii) *How HUD will use the information.* The information will be used by HUD to determine that applicants that are to be designated as foreclosure commissioners meet the statutory requirements of the Act.

(iii) *Estimate of the average burden of the collection.* The average burden of this data collection is expected to be thirty minutes per response for the compilation and mailing of the requested information to the HUD Field Assistant General Counsel. Send comments regarding this burden estimate and any suggestions for reducing this burden to Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4176, Washington, DC 20410.

(iv) *Whether submission of information is voluntary, mandatory, or required to obtain or retain a benefit, and legal authority.* Submission of this information is required in order to obtain a designation as a foreclosure commissioner under the Single Family Mortgage Foreclosure Act of 1994.

(v) *Nature and extent of confidentiality to be provided (if any).* The information requested does not lend itself to confidentiality.

Dated: October 21, 1996.

Nelson A. Díaz,

General Counsel.

[FR Doc. 96–27571 Filed 10–25–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Request for Approval

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) has submitted a proposal for the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comments and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before November 27, 1996.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interior Department, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224—Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Comments are invited on: (1) The accuracy of the agency's estimate of the burden of the proposed collection of information; and, (2) ways to minimize the burden of the collection of information on respondents.

Title: FWS Customer Service Evaluation Card.

OMB Approval Number: This is a new information collection.

Abstract: The Fish and Wildlife Service manages over 500 national wildlife refuges. Approximately 28 million people visit these refuges annually. On September 11, 1993, President Clinton issued Executive Order 12862, that requires agencies to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' The Service plans to use, as part of its evaluation and improvement process for customer service, an evaluation card that will be distributed by approximately 300 refuges to their visitors over the next three years. The information gained from this survey will enable refuge staff to determine the level of satisfaction with existing services; to close the gap between what we provide our customers and what they want; and, to identify any areas where improvements in providing services can be made. The evaluation card will also ensure that national wildlife refuges are in compliance with the Service's mandate for implementation of its customer service standards and policy to incorporate these standards in the way the Service routinely does business.

Frequency of collection: On occasion. May be quarterly or seasonal considering differences in visitation to field stations in the North and South.

Description of Respondents: Individuals or households.

Estimated Completion Time: The reporting burden is estimated to average five minutes per response.

Annual Responses: The Service estimates that it will survey 100 refuges for the first year, issuing 1,200 cards per refuge, (30,000 responses); 200 the second year (60,000 responses); and 300 refuges the third year for a total of 90,000 responses.

Annual Burden Hours: 2,500, the first year; 5,000 the second year, and 7,500 hours the third year.

Dated: October 18, 1996.

Carolyn A. Bohan,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 96–27516 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ES–960–1420–00] ES–48263, Group 30, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of portions of the north, east, and south boundaries; a portion of the subdivisional lines, and the subdivision of certain sections, Township 32 North, Range 6 East, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 29, 1996.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 29, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: October 17, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–27515 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–960–1420–00] ES–48264, Group 33, Missouri

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of portions of the north, south, and west boundaries, and a portion of the subdivisional lines, Township 32 North, Range 7 East, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 29, 1996.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 29, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: October 17, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–27517 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–GJ–M

National Park Service

Notice of Inventory Completion for Native American Human Remains from the Puget Sound Area, WA, in the Possession of the Washington State Historical Society, Tacoma, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from the Puget Sound area, WA, in the possession of the Washington State Historical Society, Tacoma, WA.

A detailed assessment of the human remains was made by Washington State Historical Society professional staff in consultation with representatives of the Puyallup Tribe of Indians.

In 1897–1898, human remains representing three individuals were apparently donated to the Washington State Historical Society by Fay Fuller, Mrs. Theodore Huggins, or Mr. Theodore Huggins, all Pierce County residents. No known individuals were identified. No associated funerary objects are present.

In 1917, human remains representing one individual from the Puget Sound area were donated to the Washington State Historical Society by Miss Ruby Blackwell. No known individuals were identified. No associated funerary objects are present.

In 1920, human remains representing one individual were donated to the Washington State Historical Society by Mr. C. Arthur Foss of Tacoma, WA. Mr. Foss was known as a collector of Northwest Coast artifacts. No known individual was identified. No associated funerary objects are present.

Before 1921, human remains representing a minimum of one individual were donated to the Washington State Historical Society by Mr. W.E. Lowrie of Tacoma, WA. No known individuals were identified. No associated funerary objects are present.

In 1957, human remains representing one individual were donated to the Washington State Historical Society by Mrs. J.A. McLeod of Tacoma, WA. No known individual was identified. No associated funerary objects are present.

The record of early donations to the Washington State Historical Society indicates these donations were generated from the local area of Tacoma. Morphological evidence and these records, including intentional cranial modification, other phyiscal characteristics, and geographic location, indicate these individuals are Native Americans from the Northwest Coast area. Historical documents and anthropological evidence indicate this type of modification was practiced by coastal tribes from British Columbia to Oregon into the historic period.

In August, 1996, the Washington State Historical Society and the Puyallup Tribe of Indians jointly mailed correspondence to all Indian tribes or Native Alaska Corporations with cultural ties to Northwest coastal regions, proposing these individuals be repatriated for the purpose of reburial. The proposal was sent to: AHTNA, Inc., the Aleut Corporation, the Arctic Slope Regional Corporation, the Bering Straits Native Corporation, the Bristol Bay Native Corporation, the Calista Corporation, the Chehalis Tribe, the Chugach Alaska Corporation, the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians, the Cook Inlet Region, Inc., the Coquille Indian Tribe, the Cow Creek Band of Upmquah Indians, Doyon, Ltd., the Elwha Klallam Tribe, the Hoh Tribe, the Jamestown S'Klallam Tribe, Koniag, Inc., the Lummi Nation, the Makah Tribe, the Muckleshoot Tribe, the NANA Corporation, the Nisqually Tribe, the Nooksack Tribe, the Port Gamble S'Klallam Tribe, the Quinalut Nation, the Quileute Tribe, the Samish Tribe, the Sauk-Suiattle Tribe, the Shoalwater Bay Tribe, the Skokomish Tribe, the Squaxin Island Tribe, the Stillaguamish Tribe, the Suquamish Tribe, the Swinomish Tribe, Sealaska Corporation, the Siletz Tribe, the Suquamish Tribe, the Swinomish Tribe, the Thirteenth Regional Corporation, the Tulalip Tribes, and the Upper Skagit Tribe. The Wahkiakum Band of the Chinook Tribe, a non-Federally recognized Native American group, was also notified. As of September 3, 1996, letters of support from Bering Straits Foundation on behalf of the Bering Straits Native Corporation, Chugach Heritage Foundation on behalf of the Chugach Native Corporation, the Jamestown S'Klallam Tribe, Koniag, Inc., the Sauk-Suiattle Indian Tribe, the Swinomish

Tribe, and the Upper Skagit Indian Tribe have been received. No objecting comments have been recieved. Consultation evidence presented by representatives of the Puyallup Tribe of Indians and a joint review of available ethno-historic and geographical evidence indicate the most likely culturally affiliated Indian tribe is the Puyallup Tribe of Indians.

Based on the above mentioned information, Washington State Historical Society officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Washington State Historical Society officials have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Puyallup Tribe of Indians.

This notice has been sent to officials of AHTNA, Inc., the Aleut Corporation, the Arctic Slope Regional Corporation, the Bering Straits Native Corporation, the Bristol Bay Native Corporation, the Calista Corporation, the Chehalis Tribe, the Chugach Alaska Corporation, the Confederated Tribe of Coos, Lower Umpqua, and Siuslaw Indians, the Cook Inlet Region, Inc., the Coquille Indian Tribe, the Cow Creek Band of Upmquah Indians, Doyon, Ltd., the Elwha Klallam Tribe, the Hoh Tribe, the Jamestown S'Klallam Tribe, Koniag, Inc., the Lummi Nation, the Makah Tribe, the Muckleshoot Tribe, the NANA Corporation, the Nisqually Tribe, the Nooksack Tribe, the Port Gamble S'Klallam Tribe, the Puyallup Tribe of Indians, the Quinalut Nation, the Quileute Tribe, the Samish Tribe, the Sauk-Suiattle Tribe, the Shoalwater Bay Tribe, the Skokomish Tribe, the Squaxin Island Tribe, the Stillaguamish Tribe, the Suquamish Tribe, the Swinomish Tribe, Sealaska Corporation, the Siletz Tribe, the Suquamish Tribe, the Swinomish Tribe, the Thirteenth Regional Corporation, the Tulalip Tribes, the Upper Skagit Tribe, and the Wahkiakum Band of the Chinook Tribe, a non-Federally recognized Native American group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Lynn D. Anderson, Washington State Historical Society/ 315 N. Stadium Way, Tacoma, WA 98403; telephone (206) 798–5911, before November 27, 1996. Repatriation of the human remains and associated funerary objects to the Puyallup Tribe of Indians may begin after that date if no additional claimants come forward.

Dated: October 21, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 96–27550 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Oklahoma in the Control of the Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the control of the Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK.

A detailed assessment of the human remains was made by Oklahoma Musum of Natural History and Oklahoma State Archeologist's Office professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma.

In 1973, human remains representing one individual were recovered from site Wd–47 by the Oklahoma Archeological Survey and donated to the Oklahoma Museum of Natural History the same year by Mr. Ronald Corbyn. No known individuals were identified. The approximately 750 associated funerary objects include glass bead fragments, conchos, hairpipe beads, one button, one earring, shell ornaments, metal points, red paint, hair, and backrest fragments.

In 1972, 135 glass seed beads were recovered from site Cn–34 and donated to the Oklahoma Museum of Natural History by the Oklahoma Archeological Survey. Accession records indicate these beads were discovered with human remains at site Cn–34, which had been destroyed by pot hunters. The human remains were not recovered.

Sites Wd–47 and Cn–34 have been identified as isolated burials dating from 1860 to the early 1900s based on funerary objects, and the presence and types of of trade goods. The associated funerary objects are consistent with known historic Cheyenne burials. Historic documents and oral history evidence presented during consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma indicate these tribes occupied this region during the nineteenth century.

Based on the above mentioned information, Oklahoma Museum of Natural History officials have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains from site Wd–47 listed above represent the physical remains of one individual of Native American ancestry. Oklahoma Museum of Natural History officials have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the approximately 750 objects from site Wd–47 listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Oklahoma Museum of Natural History officials have further determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 135 objects from site Cn–34 listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed form a specific burial site of an Native American individual. Lastly, Oklahoma Museum of Natural History officials have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Cheyenne-Arapaho Tribes of Oklahoma.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael A. Mares, Director, Oklahoma Museum of Natural History, University of Oklahoma, 1335 Asp Avenue, Norman, OK 73019, telephone (405) 325–4712, before November 27, 1996. Repatriation of the human remains and associated funerary objects to the Cheyenne-Arapaho Tribes of Oklahoma may begin after that date if no additional claimants come forward.

Dated: October 21, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 96–27549 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on August 8, 1996. The February 5, 1996, notice should be used as a reference point to identify changes. The number in parenthesis corresponds to the number in the February 5, 1996, notice. This notice is one means in which the public is informed about contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the Federal Register and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1996. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior or, pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or area office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who request the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

The following contract actions are either new, modified, discontinued, or completed in the Bureau of Reclamation since the August 8, 1996, Federal Register notice.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. New Contract Actions:

(22) Okanogan Irrigation District, Okanogan Project, Washington: Safety of Dams contract to repay District's share of cost to install an Early Warning System.

(22) Rogue River Valley and Medford Irrigation Districts, Rogue River Basin Project, Oregon: Safety of Dams contract to repay each district's share of cost to repair Fish Lake Dam.

2. Completed Contract Actions:

(4) Amendatory contracts to conform to the RRA have been executed with 10 of the 19 districts to conform to the Reclamation Reform Act of 1982 (Pub.L. 97–293). The districts that have executed contracts are: American Falls Reservoir District Number 2, Burgess Canal Company, Craig-Mattson Canal Company, Danskin Ditch Company, Farmers Friend Irrigation Company, Ltd., Long Island Irrigation Company, Parks and Lewisville Irrigation Company, Ltd, Peoples Canal and Irrigation Company, Rigby Canal and Irrigation Company, and Rudy Irrigation Canal Company, Ltd., all in the Minidoka Project, Idaho.

(7) Contract has been executed for 1996 for Ochoco Dam.

(17) Fremont-Madison ID, Minidoka Project, Idaho-Wyoming: Supplemental and amendatory contract providing for the transfer of operation and maintenance for the remaining reserved works of the Upper Snake Storage Division (including Cascade Creek Diversion Dam, Grassy Lake Dam and Reservoir, and Island Park Dam and Reservoir). Contract executed.

(19) Hermiston and West Extension Irrigation Districts, Umatilla Project, Oregon: Temporary contracts to provide water service for 1996 to lands lying outside of their boundaries. A contract for 1996 has been executed with Hermiston Irrigation District; no contract action anticipated for West Extension in 1996.

3. Contract Actions Modified:

(12) City of Madras and North Unit Irrigation District, Deschutes Project, Oregon: Temporary and long-term municipal water service contracts for approximately 125 acre-feet annually from the project water supply. A temporary contract for 1996 with the City of Madras and a long-term contract with North Unit Irrigation District for provision of the 125 acre-feet water supply to the City of Madras.

Mid Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

1. New Contract Actions:

(21) Mercy Springs WD, CVP, California: Assignment of Mercy Springs WDs water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

(22) Santa Clara WD, CVP, California: Agreement for the conditional reallocation of a portion of Santa Clara Valley WDs annual CVP contract water supply to San Luis and Delta-Mendota Water Authority members. The purpose of the conditional reallocation is to improve overall management and establishment of more reliable water supplies without imposing additional demands or operation changes upon the CVP.

2. Contract Actions Completed:

(15) City of Folsom, CVP, California: Amendment of existing water rights conveyance contract to allow delivery of an additional 5,000 acre-feet of water from Folsom Reservoir that has been acquired from the Southern California Water Company. ACTION: Amendment not required. Transfer of 5,000 acre-feet of water from Folsom Reservoir accomplished by Letter of Agreement.

3. Contract Actions Modified:

(5) Truckee Carson ID, Newlands Project, Nevada: New contract for the operation and maintenance of Newlands Project facilities. The United States terminated the original contract, and this was upheld by the U.S. District Court in Nevada on August 17, 1983. Modification: District has repaid its construction obligation.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. New contract actions:

(59) Santa Ana Project Watershed Authority (SAWPA), SRPA, California: Amend current contract with the United States to shorten repayment schedule from 30 years to 20 years.

(60) Elsinore Valley Municipal Water District, SRPA, California: Amend current contract with United States to transfer certain project facilities and certain O&M responsibilities from District to City of Lake Elsinore.

2. Contract action completed:

(10) W.F. West, BCP, California: Miscellaneous Present Perfected Rights contract for 0.8774 acre-feet of domestic water. Contract executed July 22, 1996.

(34) City of Scottsdale and other M&I water subcontractors, CAP, Arizona: Subcontract amendments associated with assignment of M&I water service subcontracts from City of Prescott, Rio Rico Utilities, Inc., and the Yavapai-Prescott Indian Tribe to provide the City of Scottsdale with additional CAP water. Contract executed September 27, 1996. (Note: Other subcontracts listed in No. 34, i.e., Mayer Domestic Water Improvement District, City of Nogales, and Cottonwood Water Works Inc., have not executed contracts to date.)

Upper Colorado Region: Bureau of Reclamation 125, South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. New contract actions:

(29) Pine River Irrigation District, Pine River Project, Colorado: Contract to allow the conversion of up to 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

2. Contract actions modified:

(9) The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, Colorado River Storage Project, Colorado: Contract to provide specific flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

3. Contract actions discontinued:

(4) Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use. No activity expected until 1997.

(5) La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use. No activity expected until 1997.

(12) Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water. No activity expected in 1996.

(13) U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers; water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually; contract will define the terms and conditions associated with delivery of this water. No activity expected in 1996.

(14) Rio Grand Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties; contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use. Discontinued for lack of interest.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59197–6900, telephone 406–247–7730.

1. New Contract Actions:

(24) Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities.

(25) Fort Shaw and Greenfields Irrigation Districts, Sun River Project, Montana: Contract for Safety of Dams costs for repairs to Willow Creek Dam.

(26) Canyon Ferry Unit, P–SMBP, Montana: Water service contract with Montana Tunnels Mining, Inc., expires June 1997. Renewal of existing contract for an additional 5 years.

(27) Pick-Sloan Missouri Basin Program, Kansas: Interim water service contracts with the Kirwin and Webster IDs in the Solomon River Basin, Kansas, to continue deliver of project water supply pending completion of contract renewal process for long-term water supply contracts.

(28) Pick-Sloan Missouri Basin Program, Nebraska: Interim water service contracts with the Loup Basin Reclamation District for the Sargent and Farwell IDs in the Middle Loup River Basin, Nebraska, to continue delivery of project water supplies pending

completion of contract renewal process for long-term water supply contracts.

2. Contract Actions Modified:

(1) Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to Section 9(c) of the Reclamation Project Act of 1939 and Public Law 100–516.

(14) Bostwick ID in Nebraska and Kansas-Bostwick ID, Farwell and Sargent IDs, Frenchman-Cambridge ID, Frenchman Valley ID, Webster ID, and Kirwin ID, P–SMBP, Kansas and Nebraska: Extension of existing water service contracts for irrigation water supplies, pursuant to Public Law 104–206.

(18) Angostura Irrigation District, Angostura Unit, P–SMBP, South Dakota: The District's current contract for water service expired on December 31, 1995. An interim 3-year contract provides for the District to operate and maintain the dam and reservoir. The proposed contract would provide a continued water supply for the District and the District's continued operation and maintenance of the facility.

3. Contract Actions Discontinued:

(6) Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir pending completion of NEPA review. NEPA compliance on hold.

(19) Shadehill Water User District, Shadehill Unit, P–SMBP, South Dakota: Water service contract expired June 10, 1995. The proposed contract would provide irrigation water to the District pursuant to terms acceptable to both the United States and the District. No action expected in 1996.

4. Contract Actions Completed:

(21) Belle Fourche Irrigation District, Belle Fourche Unit, P–SMBP, South Dakota: D&MC contract for rehabilitation work on water control structures, lining additional canals, and rehabilitation of bridges and laterals. Public Law 103–434, enacted October 31, 1994, authorized an additional $10.5 million in Federal funds and $4 million in non-Federal cost share for completion of minor construction.

Dated: October 18, 1996.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 96–27546 Filed 10–25–96; 8:45 am]

BILLING CODE 4310–94–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP CD–90–92]

Distribution of 1990, 1991 and 1992 Cable Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Distribution order.

SUMMARY: The Librarian of Congress, upon the recommendation of the Register of Copyrights, is announcing the distribution of royalties collected under the cable compulsory license, 17 U.S.C. 111, for the years 1990, 1991, and 1992. The Librarian is adopting in part and rejecting in part the decision of the Copyright Arbitration Royalty Panel (CARP). The rejection takes the form of making some adjustments to the distribution percentages.

EFFECTIVE DATE: The distribution percentages announced in this Order are effective on October 28, 1996.

ADDRESSES: The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel or William Roberts, Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Recommendation of the Register of Copyrights

Background

In 1976, Congress adopted a statutory compulsory license for cable television operators to enable them to clear the copyrights to the broadcast programming which they retransmitted to their subscribers. Codified at 17 U.S.C. 111, the cable compulsory license allows cable operators to submit semiannual royalty payments, along with accompanying statements of account, to the Copyright Office for future distribution to copyright owners of broadcast programming retransmitted by those cable operators. Until December 1993 royalty distribution proceedings were conducted by the Copyright Royalty Tribunal (CRT), at which time Congress abolished the Tribunal and transferred its responsibilities to the Librarian of Congress and the Copyright Office. Public Law No. 103–196 (1993). Distribution proceedings are now conducted by ad hoc Copyright Arbitration Royalty Panels (CARPs) convened by the Librarian of Congress, which determine the proper division of royalties among the participating claimants in a written report and then deliver that report to the Librarian for his review and approval. Today's determination constitutes the first distribution of royalties under the new system enacted by Congress in 1993.

Operation of the Cable Compulsory License

The cable compulsory license applies to cable systems that carry broadcast signals in accordance with the rules and regulations of the Federal Communications Commission (FCC). These systems are required to submit royalties for the carriage of their signals on a semiannual basis in accordance with the prescribed statutory royalty rates. The royalties are submitted to the Copyright Office, along with a statement of account reflecting the number and identity of the broadcast signals carried, the gross receipts received from subscribers for those signals, and other relevant filing information. The Copyright Office deposits the collected funds with the United States Treasury for later distribution to copyright owners of the broadcast programming through the procedure described in chapter 8 of the Copyright Act.

Creation of the cable compulsory license was premised on two significant Congressional considerations: first, the perceived need to differentiate for copyright payment purposes between the impact of local versus distant broadcast signals carried by cable operators; and second, the need to distinguish among different sizes of cable systems based upon the dollar amount of receipts they receive from subscribers for the carriage of broadcast signals. These two considerations played a significant role in deciding what economic effect cable systems had on the value of copyrighted works shown on broadcast television. *See* H.R. Rep. No. 1476, 94th Cong., 2d Sess. 90 (1976). It was felt that the carriage of local broadcast signals by a cable operator did not affect the value of the works broadcast because the signal was already available to the public for free through over-the-air broadcasting. Therefore, the compulsory license essentially lets cable systems carry local

signals for free.[1] Distant signals, however, do affect the value of copyrighted programming because local advertisers, who provide the principal remuneration to broadcasters enabling broadcasters to pay for the programming, are not willing to pay increased advertising rates for cable viewers in distant markets who cannot be reasonably expected to purchase their goods. The increase in viewership of the programming through distant signal importation by cable systems goes uncompensated because advertisers will not pay for it, and hence broadcasters cannot pay greater sums to copyright owners. The distinction among sizes of cable operators, based on their income from subscribers, assumes that only the larger systems which import distant signals have any significant economic impact on copyrighted works.

Section 111 distinguishes among three sizes of cable systems according to the amount of money they receive from subscribers for the carriage of broadcast signals. The first two classifications are small to medium-sized cable systems known as SA–1's and SA–2's, in accordance with the title of the statement of account form which they file with their royalty payments. SA–1's pay a flat rate (currently $28) for carriage of all their signals, while SA–2's pay a percentage of their gross receipts received from subscribers for broadcast signals irrespective of the number of distant signals that they carry. The large systems, SA–3's, pay in accordance with a highly complicated and technical formula, principally dependent on how the FCC regulated the cable industry in 1976, which allows the systems to distinguish between carriage of local and distant signals and to pay accordingly. The vast majority of royalties available for distribution in this proceeding come from the large cable systems.

The royalty scheme for the large cable systems employs the statutory device known as the distant signal equivalent (DSE). Distant signals are determined in accordance with two sets of FCC regulations: the ''must carry'' rules for broadcast stations in effect on April 15, 1976, and a station's television market as currently defined by the FCC. 17 U.S.C. 111(f). A signal is distant for a particular cable system when that system would not have been required to carry the station under the FCC's 1976 ''must carry'' rules, and the system is not located with the station's television market.

Cable systems pay for carriage of distant signals based upon the number of DSE's they carry. The statute defines a DSE as ''the value assigned to the secondary transmission of any nonnetwork television programming carried by a cable system in whole or in part beyond the local service area of a primary transmitter of such programming.'' 17 U.S.C. 111(f). A DSE is computed by assigning a value of one to a distant independent broadcast station, and a value of one-quarter to distant noncommercial educational and network stations, which do have a certain amount of nonnetwork programming in their broadcast days. Cable systems pay royalties based upon a sliding scale of percentages of their gross receipts depending upon the number of DSEs they incur. The greater the number of DSEs, the greater the total percentage of gross receipts and, consequently, the larger the total royalty payment.

As noted above, the operation of the cable compulsory license is intricately linked with how the FCC regulated the cable industry in 1976. The Commission regulated cable systems extensively in 1976, restricting them in the number of distant signals they could carry (the distant signal carriage rules), and requiring them to black-out programming on a distant signal where the local broadcaster had purchased the exclusive rights to that same programming (the syndicated exclusivity rules). However, in 1980, the Commission took a decidedly deregulatory stance towards the cable industry and eliminated the distant signal carriage rules and the syndicated exclusivity (''syndex'') rules. *Malrite T.V.* v. *FCC,* 652 F.2d 1140 (2d Cir. 1981), *cert. denied sub. nom., National Football League, Inc.* v. *FCC,* 454 U.S. 1143 (1982). Cable systems were now free to import as many distant signals as they desired without worry of any black-out restrictions.

Pursuant to its statutory authority, and in reaction to the FCC's action, the Copyright Royalty Tribunal initiated a rate adjustment proceeding for the cable compulsory license to compensate copyright owners for the loss of the distant signal carriage rules and the syndex rules. This rate adjustment proceeding produced two new rates applicable to large cable systems making section 111 royalty payments. 47 FR 52146 (November 19, 1982). The first, to compensate for the loss of the distant signal carriage rules, was the adoption of a royalty fee of 3.75% of a cable system's gross receipts for carriage of each distant signal that would not have previously been permissible under the former distant signal carriage rules. This 3.75% fee has become known as the ''penalty fee'' in cable circles and has restricted the number of distant signals carried today by large cable systems.

The second rate adopted by the CRT, to compensate for the loss of the syndex rules, is known as the syndex surcharge. Large cable operators must pay this additional fee when the programming appearing on a distant signal imported by the cable system would have been subject to black-out protection under the FCC's former syndex rules.[2]

Since the CRT's action in 1982, the royalties collected from cable systems have been divided into three categories for distribution to copyright owners to reflect their origin: 1) the ''Basic Fund'', which includes all the royalties collected from SA–1 and SA–2 cable systems, and the royalties collected from large SA–3 systems for carriage of distant signals that would have been permitted under the FCC's former distant signal carriage rules; 2) the ''3.75% Fund,'' which includes the royalties collected from large cable systems for distant signals whose carriage would not have been permitted under the FCC's former distant signal carriage rules; and 3) the ''Syndex Fund,'' which includes the royalties collected from large cable systems for carriage of distant signals that contain programming that would have been subject to black-out protection under the FCC's former syndex rules.

Distribution of Royalties

Royalties are collected twice a year from cable systems for the privilege of retransmitting broadcast signals to their subscribers. As discussed above, these royalties are collected by the Copyright Office and deposited in interest-bearing accounts with the United States Treasury for subsequent distribution to copyright owners of the retransmitted broadcast programming.

In order to be eligible for a distribution of royalties, a copyright owner of broadcast programming retransmitted by one or more cable systems must submit a written claim to the Copyright Office. Only copyright owners of nonnetwork broadcast programming are eligible for a royalty distribution. 17 U.S.C. 111(d)(3). Eligible copyright owners must submit their claims in the month of July for royalties collected from cable systems

[1] It should be noted, however, that cable systems which carry only local signals and no distant signals (a rarity) are still required to submit a statement of account and pay a basic minimum royalty fee.

[2] Royalties collected from the syndex surcharge have decreased in recent years because the FCC has reimposed syndicated exclusivity protection in certain circumstances.

during the previous year. 17 U.S.C. 111(d)(4)(A). Once the claims have been processed, the Library begins to determine whether there are controversies among the parties filing claims as to the proper division and distribution of the royalties. If there are no controversies—meaning that the claimants have settled among themselves as to which claimant is due what amount of royalties—then the Library distributes the royalties in accordance with the claimants' agreement(s) and the distribution is concluded. However, the Library must conduct a distribution proceeding in accordance with the provisions of chapter 8 of the Copyright Act for those claimants who do not agree.

Distribution proceedings conducted under chapter 8 are accomplished in two phases. In Phase I, the royalties are divided among the categories of broadcast programming represented in the proceeding. The copyright owner claimants have, traditionally, divided themselves into eight categories during Phase I. These categories of claimants are: (1) Program Suppliers, which are the copyright owners of syndicated television series, movies, and television specials; (2) Joint Sports Claimants, which are the copyright owners of live telecasts of professional and college team sports; (3) National Association of Broadcasters (also known as ''Commercial Television''), which are the copyright owners of programs —typically news and local interest programs—produced by broadcast stations; (4) Public Broadcasting Service (also known as ''Noncommercial Television''), which are the copyright owners of all programming broadcast by the Public Broadcasting Service that do not fall within another category;[3] (5) Devotional Claimants, which are copyright owners of syndicated programs with a religious theme that do not fall within another category; (6) Canadian Claimants, which are the copyright owners of programs broadcast on Canadian stations that do not fall within another category; (7) Music Claimants, which are the copyright owners of musical works broadcast on all programming, as represented by the performing rights societies ASCAP, BMI and SESAC; and (8) National Public Radio, representing the copyright owners of all programming broadcast on National Public Radio radio stations that does not fall within the Music Claimants category. The copyright owners within each category traditionally agree among themselves to hire counsel to represent all owners within that category during the course of a Phase I distribution proceeding.

In Phase II, the royalties are divided among claimants within a particular category. For example, in a Phase II proceeding within the Music Claimants category, the copyright owners represented by ASCAP may be in controversy with the copyright owners represented by BMI as to the division of royalties allotted to the Music Claimants category after the conclusion of the Phase I proceeding. If such a controversy existed, the Library would conduct a Phase II proceeding under the same provisions of chapter 8 of the Copyright Act applicable to the Phase I proceeding.

The cable distribution proceeding which is the subject of today's recommendation of the Register of Copyrights, and Order of the Librarian of Congress, is a Phase I proceeding. Phase II proceedings will be conducted subsequently to resolve all Phase II controversies for distribution of the 1990–1992 cable royalties.

This Proceeding

At stake in this royalty distribution proceeding is over $500 million in royalties collected from cable systems for the retransmission of broadcast signals during the years 1990–92. A distribution proceeding for the 1990 royalties was begun by the CRT in April of 1993, 58 FR 17387 (April 2, 1993), but was suspended when the Congress eliminated the Tribunal later that year. *See* Order, CRT Docket No. 92–1–90 CD (October 14, 1993).

Royalty distribution proceedings now require the Librarian to assemble a CARP to determine the proper allocation of royalties among the copyright owner claimants. The Librarian assembles a CARP for a period of 180 days—selecting two of the arbitrators and allowing the two selected to choose a third—to make a determination as to the proper distribution or rate adjustment and submit a written report to the Librarian with their findings of fact and conclusions of law. 17 U.S.C. 802(e). The Librarian then has 60 days to review the report and, upon the recommendation of the Register of Copyrights, either accept or reject it. 17 U.S.C. 802(f). The statute directs that the Librarian must adopt the report unless he ''finds that the determination is arbitrary or contrary to the applicable provisions of'' the Copyright Act, whereupon he must ''after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be''. *Id.*

Shortly after the elimination of the Tribunal and the assumption of its new duties, the Library published a notice seeking comments on the existence of controversies to the distribution of the 1990 cable royalty fund. 59 FR 64714 (December 15, 1994). Consistent with its position that the Library was not a successor agency to the Tribunal, the Library began 1990 cable distribution proceedings anew. At the urging of the parties submitting comments, the Library consolidated distribution of the 1990, 1991 and 1992 cable funds into a single proceeding and instructed those parties interested in presenting evidence to the CARP to file their Notices of Intent to Participate. 60 FR 14971 (March 21, 1995). Representatives from six claimant groups expressed their intention to participate in the proceeding: Program Suppliers, Joint Sports Claimants (JSC), the National Association of Broadcasters (NAB), the Public Broadcasting System (PBS), the Devotional Claimants, and the Canadian Claimants.[4] The participating parties submitted their written direct cases on August 18, 1995, and precontroversy discovery was conducted on those cases consistent with the new procedural rules adopted by the Librarian to govern CARP proceedings. *See* 37 CFR 251.45.

During the course of the precontroversy discovery period, the Librarian was called upon to make a number of procedural and evidentiary rulings consistent with 17 U.S.C. 801(c). *See Order,* dated October 30, 1995; *Order,* dated November 7, 1995. In the November 7, 1995 *Order,* the Librarian specifically designated an issue to the CARP for its resolution: ''whether programs distributed by the Fox Broadcasting Corp. to its affiliates during 1990–1992 were 'nonnetwork programs' within the meaning of Section 111(d)(3)'' of the Copyright Act. *Order,* dated November 7, 1995 at p. 21. The Library permitted the parties to the proceeding ''to amend their direct cases to submit such evidence as they consider relevant by December 15, 1995.'' *Id.*

Arbitration proceedings before the CARP were initiated on December 4, 1995, and the 180 day arbitration was begun. 60 FR 58680 (November 28, 1995). On June 3, 1996, 180 days later, the chairperson of the CARP delivered

[3] An example of a program which would not be in the Public Broadcasting Service category, because it fell within another category, would be the movie ''Platoon'' that was broadcast by a PBS station. That program would properly fall within the Program Suppliers category.

[4] The Music Claimants and NPR settled their claims to the 1990–92 funds, and did not participate. The Canadian Claimants settled their 1990 claims with the other parties, and therefore only participated in the proceeding for the years 1991 and 1992.

the Panel's written report to the Librarian. As provided in 37 C.F.R. 251.55(a), the parties filed their petitions with the Librarian to modify and/or set aside the decision of CARP by June 17, 1996. Replies were filed by July 1, 1996.[5]

Further Action by the CARP

After preliminary review of the CARP's report, and consideration of the parties' petitions to modify the Panel's decision, the Register of Copyrights determined that she would not be able to make a recommendation to the Librarian regarding the sufficiency of the report. Specifically, the Register determined that the report lacked the full explanation needed to enable her to make a recommendation of either rejection or adoption, as required by the statute. *See* 17 U.S.C. 802(f).

On July 11, 1996, the Register met with representatives of the Program Suppliers, JSC, PBS, National Public Radio (NPR), the Music Claimants, NAB, the Canadian Claimants, and the Devotional Claimants, to discuss the possibility of remanding the report to the Panel for further explanation and development. After considering the parties' reactions to such a proposal, the Register decided to submit a series of certified questions to the Panel in order to expand the explanation of the reasoning behind the Panel's determinations of the distribution percentages.

On July 16, 1996, the Office delivered the certified questions to the Panel chairperson, the Honorable Mel R. Jiganti. After consulting with the other members of the Panel, Judge Jiganti delivered the Response to the certified questions on August 29, 1996. The Response has been made a part of the Panel's report as an addendum.

The parties to the proceeding were given additional time to comment on the Response. *See* Order, dated August 30, 1996. These supplemental petitions to modify were received by September 17, 1996. Replies were filed by September 24, 1996.

[5] National Public Radio (NPR), which settled for all years and did not participate in the proceeding, filed joint comments with the Music Claimants on the Panel's Report on August 2, 1996, and additional comments on September 17, 1996. They request the Librarian to make the following ''corrections'' to the CARP report: (1) clarify that there are traditionally eight claimant groups to cable royalties, the six described by the Panel plus Music Claimants and NPR; (2) clarify that both the Music Claimants and NPR filed Notices of Intent to Participate in this proceeding; and (3) correct the mathematical error made by the Panel for failing to include the settlements of the Music Claimants and NPR in the total distribution percentages.

The first two points are accepted as accurate. The third point is addressed, *infra*, in this Order.

The Reporting Date

Section 802(f) of the Copyright Act states that the Librarian shall deliver his decision either accepting or rejecting the Panel's report within 60 days of its receipt. The Panel did not deliver its final determination until August 29, 1996, the day on which the Register received the Response to her certified questions. Issuance of this Order is, therefore, in compliance with the statutory deadline.

Standard of Review

The Copyright Royalty Tribunal Reform Act of 1993 created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review: the Librarian and the Court of Appeals for the District of Columbia Circuit. Section 802(f) directs the Librarian to either accept the decision of the CARP or reject it. If the Librarian rejects it, he must substitute his own determination ''after full examination of the record created in the arbitration proceeding.'' *Id.* If the Librarian accepts it, then the determination of the CARP has become the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP ''unless the Librarian finds that the determination is arbitrary or contrary to the provisions of this title.'' Neither the Reform Act nor its legislative history indicates what is meant specifically by ''arbitrary,'' but there is no reason to conclude that the use of the term is any different than the ''arbitrary'' standard described in the Administrative Procedure Act, 5 U.S.C. 706(2)(A).

Review of the case law applying the APA ''arbitrary'' standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency is generally considered to be arbitrary when it:

(1) Relies on factors that Congress did not intend it to consider;

(2) Fails to consider entirely an important aspect of the problem that it was solving;

(3) Offers an explanation for its decision that runs counter to the evidence presented before it;

(4) Issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;

(5) Fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and

(6) When the agency's action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Manufacturers Association v. *State Farm Mutual Insurance Co.,* 463 U.S. 29 (1983); *Celcom Communications Corp.* v. *FCC,* 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA,* 758 F.2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a determination is ''arbitrary,'' prior decisions of the Court of Appeals for the District of Columbia Circuit reviewing the determinations of the former Copyright Royalty Tribunal have been consulted. The decisions of the Tribunal were reviewed under the ''arbitrary and capricious'' standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: while the Tribunal was granted a relatively wide ''zone of reasonableness,'' it was required to articulate clearly the rationale for its award of royalties to each claimant. *See Recording Industry Association of America* v. *CRT,* 662 F.2d 1 (D.C. Cir. 1981); *National Cable Television Association* v. *CRT,* 689 F.2d 1077 (D.C. Cir. 1982); *Christian Broadcasting Network* v. *CRT,* 720 F.2d 1295 (D.C. Cir. 1983); *National Association of Broadcasters* v. *CRT,* 772 F.2d 922 (D.C. Cir. 1985). As one panel of the D.C. Circuit succinctly noted:

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully. * * *

Christian Broadcasting Network, Inc. v. *CRT,* 720 F.2d 1295, 1319 (D.C. Cir. 1983), *quoting National Cable Television Association* v. *CRT,* 689 F.2d 1077, 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same ''arbitrary'' standard used by the courts to review the Tribunal, he must be presented by CARP with a detailed rational analysis of the decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a ''clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress.'' H.R. Rep. No. 103–286, 103 Cong., 1st Sess. 13 (1993). Thus, to engage in reasoned decisionmaking, the

CARP must ''weigh all the relevant considerations and that it set out its conclusions in a form that permits [a determination of] whether it has exercised its responsibilities lawfully.'' *National Cable Television Association* v. *CRT*, 689 F.2d 1077, 1091 (D.C. Cir. 1982). This goal cannot be reached by ''attempt[ing] to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record.'' *Christian Broadcasting Network, Inc.* v. *CRT*, 720 F.2d 1295, 1319 (D.C. Cir. 1983).[6]

It is the need for explained decisionmaking that prompted the Register to submit certified questions to the CARP in this proceeding. The Response having now been received and made a part of the CARP's report, it is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination.

Review of the CARP Report

As discussed above, the parties to this proceeding submitted petitions to the Librarian to modify the Panel's determination based on their assertions that the Panel acted arbitrarily or contrary to the applicable provisions of the Copyright Act. These petitions have assisted the Register in identifying what evidence and issues in this enormous proceeding, in the eyes of the petitioners, are areas where the Panel may have acted arbitrarily or contrary to the provisions of the Copyright Act. The law gives the Register the responsibility to make recommendations to the Librarian on the panel's determination 17 U.S.C. 802 (f) and in so doing she must review the entire report.

After a complete review of the Panel's report and the record in this proceeding, the Register has determined that there are nine issues that require a full discussion and analysis.

The first issue involves the Panel's treatment of the ''harm'' criterion as a means of calculating the division of royalties among the claimant groups. In order to determine the percentage royalties due to a particular category of programming, the Copyright Royalty Tribunal fashioned three criteria to weigh the relative merit of each party's evidence. The first criterion—the ''harm'' criterion—required each party to demonstrate how it has been economically harmed by cable systems' importation of distant signals. The CRT typically gave an unquantified credit, or no credit, to each party depending upon how well that party demonstrated it was harmed by distant signal importation. *See, e.g.* 57 FR 15286 (April 27, 1992). The Panel chose to discount the importance of the harm criterion in this proceeding, which requires review.

The second issue concerns the eligibility of copyright owners of Fox programming for a distribution of royalties. As noted above, only copyright owners of nonnetwork programming are entitled to a royalty distribution. The Library specifically designated the ''Fox issue'' to the Panel for resolution, and the Panel ruled as a matter of law that Fox programming was eligible for a distribution. The question is whether that ruling was proper.

The third issue involves the Panel's distribution percentages for the entire royalty pool. The Panel fashioned its percentages as if the entire royalty pool were subject to distribution, when in fact two categories of copyright owners—Music Claimants and NPR—had settled out of the proceeding and did not participate. The question is whether the Panel's percentages must be adjusted to include the Music Claimants and NPR's settled funds.

The fourth issue concerns the Panel's allocation of royalties from the 3.75% Fund. As discussed above, the 3.75% Fund represents royalties collected from large cable systems for the retransmission of distant signals that would not have been permissible under the FCC's former distant signal carriage rules. Not all parties are entitled to 3.75% royalties, because not all parties own programming that was retransmitted on formerly nonpermitted distant signals. The questions for review on this issue are whether the Panel considered JSC's evidence regarding its claim to the 3.75% Fund, whether the 3.75% award to the Canadian Claimants was correct, and whether the Canadian Claimants 1990 3.75% award (which was reached through settlement with the other parties) is assured as a matter of law.

The fifth issue concerns the Panel's award to NAB. NAB contends that the Panel miscategorized certain programs which belonged in the NAB category, thereby reducing NAB's overall award. NAB also claims that the Panel rejected certain statistical survey evidence that it presented, thereby further reducing its award.

The sixth issue concerns the award to the Devotional Claimants. Like NAB, they allege that the Panel ignored and/or rejected certain evidence and arguments which would have resulted in an increase of their award.

The seventh issue involves the Panel's award of Basic Fund royalties to the Canadian Claimants. The question is on what basis, or what approach, did the Panel use in arriving at the Canadian's award and was it proper.

The eighth issue is the Panel's award to PBS. PBS alleges that the Panel failed to make an adjustment in the statistical survey numbers presented by PBS which would have resulted in an increase in its award.

The ninth, and final, issue was not raised by any of the parties and is being reviewed on the Register's initiative. The Panel made a single, unified award to each claimant for each of the three years of cable royalties available for distribution. The question is whether it was permissible for the Panel to make such an award, or whether it was required to award different percentages for each claimant for each year based upon the evidence each claimant submitted for that year.

A discussion and analysis of these nine issues, and a resolution of each as to whether the Panel acted arbitrarily or inconsistently with the Copyright Act follows. As noted below, those areas where the Panel erred, the Register is recommending that an appropriate adjustment be made to the awards of the affected parties.

Resolution of the Issues

A. The ''Harm'' Criterion

Since the initial distribution of cable royalties, the Copyright Royalty Tribunal has attempted to determine the correct division of cable royalties among competing claimants through application of three primary criteria to each claimant: (1) the harm suffered by the claimant as a result of distant signal retransmission by cable operators; (2) the benefit accruing to cable operators for the retransmission of the claimant's works; and (3) the predictive marketplace value of the claimant's works. *See National Association of Broadcasters* v. *CRT*, 675 F.2d 367 (D.C. Cir. 1982). The CARP took express notice of these criteria, and discussed the Tribunal's application of the ''harm'' criterion in various proceedings. Report at 20–21. The Panel concluded that ''the Tribunal has generally discounted the 'harm' criterion from its consideration due to an inability to quantify the evidence submitted on this factor,'' but did note that the Tribunal in the 1989 proceeding ''gave Program Suppliers and JSC (but not NAB or PTV) a 'credit for harm'* * *'' *Id.* The Panel then stated:

[6] The record in this proceeding is much larger, containing over 12,000 pages of hearing transcripts and several thousand pages of briefs and arguments.

Given this history, and taking into account the evidence and arguments regarding 'harm' which have been presented in this proceeding, we have determined to make explicit what has been implicit since these royalty proceedings were first commenced. In creating the compulsory license scheme, Congress specifically recognized that harm occurs when distant signal [sic] are retransmitted without compensation. Experience has demonstrated the difficulty, if not impossibility, of quantifying this factor or of determining which claimants were 'harmed' more than others by distant signal retransmissions. Consequently, we have concluded that 'harm' should be taken as a given, and we will neither summarize nor address the claimants' arguments in this regard or attempt to grant or deny 'credits' for a showing of harm. Instead, all claimants are deemed to have been equally harmed by virtue of their eligibility to make claim to a share of these royalties.

Id. at 21.

Program Suppliers and Devotional Claimants challenge the Panel's approach to the ''harm'' criterion, and its decision that ''all claimants are deemed to have been equally harmed. * * *'' Program Suppliers submit that the Panel's treatment of harm as a nonfactor means that all parties received a zero credit for harm. They argue that such action was contrary to the express direction of the Copyright Royalty Tribunal Reform Act of 1993 which required the Panel to adhere to prior Tribunal decisions and determinations, and that it was arbitrary because there was no evidence in the record to suggest that all parties were harmed equally. Program Suppliers Petition to Modify at 5–8. Program Suppliers submit that they were the only party to prove compensable harm and therefore are entitled to an upward adjustment of their royalty share. *Id*. at 10–13.

Devotional Claimants do not dispute the Panel's authority to treat all claimants as equally harmed, but submit that they did not receive any benefit whatsoever from the Panel's conclusion. The Devotional Claimants note that the Tribunal did give some claimants credit for harm in the 1989 proceeding, but expressly denied the Devotional Claimants any credit based on a finding that they were not harmed by the importation of distant signals by cable systems. Devotional Claimants Petition to Modify at 4. Because the Panel decided to treat all claimants as equally harmed, the Devotional Claimants submit that their award must go up from its 1989 level. They submit that the Panel's decision was arbitrary because it failed to explain why the Devotional Claimants did not receive any credit for harm, despite the Panel's supposed assertion that the Devotional Claimants would now receive a credit for harm. *Id*. at 6.

JSC, PBS, NAB, and the Canadian Claimants object to Program Suppliers' categorization of the harm criterion. These parties, for the most part, argue that Program Suppliers failed to prove adequately that they were harmed by distant signal importation, so that even if the Panel had awarded quantifiable 'harm' credits, Program Suppliers were not entitled to any. NAB Reply at 5–10; JSC Reply at 8–14; Canadian Claimants Reply at 14; PBS Reply at 4–8. Several parties also offer arguments to bolster the reasoning of the Panel to treat all claimants as equally harmed. JSC, NAB, and PBS submit that the Federal Communications Commission's reimposition of the broadcast syndicated exclusivity rules in 1990 are considerable evidence of ''changed circumstances'' justifying the Panel's break with Tribunal precedent. JSC Reply at 10; NAB Reply at 5–6; PBS Reply at 7. PBS submits that the Panel did consider the evidence the parties presented regarding harm, and ''conclud[ed], in effect, that the evidence was inconclusive and did not establish that any party was entitled to a 'harm' credit.'' PBS Reply at 3. Canadian Claimants acknowledge that the Panel may have ''correctly or incorrectly rolled the harm criteria into marketplace value,'' but submit that they nonetheless proved harm. All in all, JSC, NAB, PBS and the Canadian Claimants believe that their evidence on harm is superior to that of Program Suppliers.

In her certified questions to the Panel, the Register requested clarification regarding the Panel's application of the harm criterion. Specifically, the Register inquired as to ''[w]hat record evidence supports your conclusion that all claimants were equally harmed during 1990–92,'' and asked ''[i]f you concluded that the parties were equally harmed during 1990–92, but the Tribunal concluded that the parties were disparately harmed in 1989, how did that affect your awards to each of the six parties?'' Certified questions 1–A, 1–B.

The Panel responded to both questions by stating that it ''found harm to be of limited utility and not quantifiable. And, other than identifying that a claimant whose program was retransmitted without compensation has been harmed, it does not lend any appreciable information on market value.'' CARP Response at 4.

Program Suppliers argue that the Panel's answer demonstrates that it eliminated the harm criterion ''as a legal matter,'' which, they submit, is clearly contrary to the statute. Program Suppliers Supplemental Petition at 4. The Devotional Claimants continue their assertion that all parties were treated as equally harmed, requiring an increase in the Devotionals' award. Devotional Claimants Supplemental Petition at 7–8.

In reply, PBS and NAB submit that Program Suppliers' assertion is incorrect, and that rather than ''legally'' eliminate the harm criterion, the Panel weighed the evidence and determined that none of the parties was entitled to a credit for harm. NAB Supplemental Petition Reply at 5–6; PBS Supplemental Petition Reply at 2–3. JSC contend that Program Suppliers' harm arguments are without merit because they failed to sustain their burden on proving harm, JSC Supplemental Petition Reply at 5–6, and the Devotional Claimants submit that even though the harm criterion is of no value for determining royalty distributions, they are nevertheless entitled to an increase in their award. Devotional Claimants Supplemental Petition Reply at 4–8.

It is clear from the Panel's answer that, rather than treating all parties as equally harmed and awarding equal shares of harm credit, the Panel effectively determined that the harm criterion was a complete nonfactor. The Panel did not consider harm to be of any value in determining the distribution percentages, instead it emphasized the marketplace value criteria. As a result, all parties received a zero credit for harm, and the evidence presented by the parties regarding this factor was given no weight. The issue is, then, whether it is permissible for the CARP to determine the harm criterion was not relevant.

Section 802(c) of the Copyright Act states that CARPs ''shall act on the basis of a fully documented written record, *prior decisions of the Copyright Royalty Tribunal*, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c).'' (emphasis added). Program Suppliers argue that the ''prior decisions of the Copyright Royalty Tribunal'' language means that all CARPs are bound by, and may not deviate from, Tribunal precedent. This would mean that the Panel in this proceeding was bound to interpret and apply the harm criterion in the same manner that the CRT did in previous cable distribution proceedings.

This is too narrow a reading of the statutory language. The CARPs are vested with full authority ''to distribute royalty fees'' collected under the cable compulsory license, and ''to determine,

in cases where controversy exists, the distribution of such fees.'' 17 U.S.C. 801(b)(3). While the CARP must take account of Tribunal precedent, the Panel may deviate from it if the Panel provides a reasoned explanation of its decision to vary from precedent. *Airmark Corp.* v. *FAA*, 758 F.2d 685, 692 (D.C. Cir. 1985). Such action is fully consistent with judicial interpretation of the role of precedent. It would make little sense to require the CARPs to apply Tribunal precedent in all circumstances, and allow no deviation, especially in the area of determining the relevant factors for distributing royalties. The Tribunal was not itself consistent in application of the harm criterion, and never quantified the value of a ''harm credit.'' The Panel in this proceeding took full account of the harm criterion—i.e. acted on the basis of it—and concluded, consistent with its authority to make distribution determinations, that the criterion was not useful to deciding distribution percentages. The Panel further noted that even the Tribunal itself had, through the years, ''generally discounted the 'harm' criterion from its consideration due to an inability to quantify the evidence submitted on this factor. * * *'' Report at 20. Because the Panel provided a reasoned explanation for its decision to discount the harm criterion, and clarified in its response to the certified questions that it did not give any claimant credit for harm, it did not act arbitrarily or contrary to the statute.

B. The Fox Issue

On October 2, 1995, before the initiation of the 1990–92 consolidated cable royalty distribution proceeding, JSC filed a motion with the Librarian of Congress requesting him to rule that Fox-distributed programming is network programming ineligible to receive section 111 royalties.

The basis of JSC's motion was that section 111 of the Copyright Code provides that only owners of nonnetwork television and radio programs may claim cable royalties. JSC Motion at 1–3. According to JSC, Fox Broadcasting Corp. had become a network by the years 1990–92, serving 90% of television households and paying independent producers license fees comparable to that of ABC, CBS, and NBC. *Id.* at 3. JSC therefore moved to have the programming licensed by Fox television declared as noncompensable network programming and to dismiss those royalty claims represented by Program Suppliers that are for nationally-distributed Fox programs. *Id.*

Program Suppliers opposed JSC's motion on the basis that cable systems paid for Fox-affiliated stations as a full distant signal equivalent during 1990–92 and continue to do so today because those stations are not network stations as defined by Section 111. Program Suppliers Opposition at 2–4. Program Suppliers further argued that Fox does not have the nationwide reach that ABC, CBS, and NBC have because Fox's stations are mostly UHF stations with lesser coverage, and this lesser coverage has resulted in lower network fees for Fox programs than for ABC, CBS and NBC programs. *Id.* at 3–4. Program Suppliers also noted that Fox affiliates often choose the times when Fox programs air as opposed to the networks which have uniform program times and dates. *Id.*

In reply, JSC stated that it was not basing its argument on the status of Fox-affiliated stations, whether they are network or nonnetwork stations. JSC Reply at 4. JSC accepted Program Suppliers' argument that Fox-affiliated stations were not network stations in 1990–92 because they did not broadcast network programming ''for a substantial part of the station's typical broadcast day,'' which is a requirement for a station to be considered a network station under section 111. *Id.* at 3–4. However, in JSC's view, that did not matter because programs could be network programs even if they aired on a nonnetwork station so long as they were distributed by a nationwide network. *Id.* at 4–5.

On November 7, 1995, the Copyright Office issued an Order designating the following issue to the CARP: ''whether programs distributed by the Fox Broadcasting Corporation to its affiliates during 1990–92 were 'nonnetwork programs' within the meaning of Section 111(d)(3).'' The Office further ordered that any party could amend its direct cases to submit such evidence as it considered relevant by December 15, 1995.

On December 15, 1995, two parties, JSC and Program Suppliers amended their cases to provide written testimony on the designated Fox issue. On December 29, 1995, PBS filed a partial opposition to JSC's precontroversy motion.

On January 26, 1996, the Panel ruled, as a matter of law, that the definitions section of 111(f) provides that the words defined in that section apply as well to their ''variant forms''; that the phrase ''network program'' was a ''variant form'' of the phrase ''network station''; and therefore a program had to be aired on network stations before it could be considered a network program ineligible for section 111 royalties. Tr. 6899–90. In addition, it ruled that because it disposed of the Fox issue as a matter of law, it would not consider the written testimony JSC and Program Suppliers had furnished on the Fox issue. Tr. 6900.

JSC challenged the ruling of the Panel as contrary to law, and urged the Librarian to declare that ''(1) programming may be network programming, ineligible for compensation under section 111(d)(3), even if it was not broadcast over a station classified as a 'network' station under section 111(f), (2) copyright owners are not required to have Fox affiliates declared 'network' stations before they can challenge the allocation of royalties to Fox programming; and (3) the programming distributed by the Fox network to its affiliates does not qualify as 'nonnetwork' programming under section 111(d)(3).'' JSC Petition to Modify at 24.

Program Suppliers urge the Librarian to reject JSC's request. They argue that independent stations are paid for as a full (1.0) DSE, whereas network stations are paid for as a one-quarter (0.25) DSE. Program Suppliers Reply at 27–28. They assert that Congress made the decision that cable operators pay for the entire programming on independent stations, and therefore, no program on an independent station could be, as a matter of law, a network program. *Id.* at 28–29.

JSC countered that the 4–1 ratio Congress established for the value of nonnetwork programming on independent and network stations was simply a rough estimate that is often not the case in reality. Just as 40–50% of programs on network stations are nonnetwork programs —instead of Congress' estimate of 25%—it could be the case, JSC posits, that a small percentage of programs on independent stations are network programs—instead of Congress' estimate of 100%. JSC Petition to Modify at 28.

Although the Register did not certify a question to the Panel regarding its treatment of the Fox issue, the Panel nonetheless included a response. They observed:

> The Panel would like to comment on the Fox issue. The Copyright Office views it as a mixed question of fact and law. The Panel respectfully disagrees. We found it to be solely a matter of law. The Joint Sports Claimants in their petition to modify did not suggest that it is a question of fact.

Response at 3.

JSC urged the Librarian to reject the Panel's resolution of the Fox issue as a matter of law. JSC Supplemental

Petition at 6. Further, JSC urged the Librarian to ''articulate the appropriate test for deciding whether programming is noncompensable network programming,'' submitting that the proper test should be ''whether the programming has been sold to a single buyer for exclusive distribution across a nationwide network of broadcast affiliates.'' *Id* at 6–7. Program Suppliers and PBS oppose JSC's requests, submitting that the Panel ruled correctly on the Fox issue, and that there are ''no grounds'' for the Librarian to adopt JSC's test for determining noncompensable network programming. Program Suppliers Supplemental Petition Reply at 9; PBS Supplemental Petition Reply at 4–5. Program Suppliers further note that it only would be permissible for the Librarian to adopt such a test through a rulemaking proceeding, and not during the course of review in a royalty distribution proceeding. Program Supplier Supplemental Petition Reply at 9.

The House Judiciary Committee Report to the Copyright Act discusses the disparate royalty obligations under the cable compulsory license for network versus independent stations:

> Under the proposal, the royalty fee is determined by a two step computation. First, a value called a ''distant signal equivalent'' is assigned to all ''distant'' signals. Distant signals are defined as signals retransmitted by a cable system, in whole or in part, outside the local service area of the primary transmitter. Different values are assigned to independent, network, and educational stations because of *the different amounts of viewing of non-network programming carried by such stations.* For example, the viewing of non-network programs on network stations is considered to approximate 25 percent.

H.R. Rep. No. 1476, 94th Cong, 2d Sess. 90 (1976) (emphasis added). It appears from the above statement that Congress considered that there were different amounts of viewing of nonnetwork program on all three categories of stations, and estimated that it was 25% on network stations. Therefore, Congress also estimated that it was 100% on independent stations, but did not preclude the possibility that there could be network programs on independent stations.

Congress spoke in the statute and the legislative history only with regard to how cable systems should pay royalties for network stations; it did not define ''network programming'' for royalty distribution purposes, other than to state that only copyright owners of ''nonnetwork programming'' are entitled to a distribution. On the payment side, Fox Broadcasting stations are paid for as independent signals, meaning that they are paid for at one DSE, as opposed to the one-quarter DSE for network signals. The reason is that, during the 1990–1992 period, Fox stations did not ''transmit[] a substantial part of the programming supplied by such network[] for a substantial part of that station's typical broadcast day.'' 17 U.S.C. 111(f). The issue, then, is can Fox be a network for distribution purposes, but not a network for payment purposes.

PBS argues in its reply to JSC's petition to modify, that the Copyright Royalty Tribunal ruled, as a matter of law, in the 1978 cable copyright royalty distribution proceeding, in the context of PBS programming, that programs must air on network stations before they can be considered network programs. PBS Reply at 14–17. However, in the 1978 proceeding, the Tribunal considered and ruled on two arguments in the alternative. First, it considered the question of whether public television stations are network stations, as defined in section 111(f). If public television stations were network stations, the Tribunal was prepared to find that PBS programming was network programming. However, the Tribunal found that PBS did not own any public television stations, nor were any public television stations affiliates of PBS. PBS is a membership corporation whose members are public television stations. Therefore, the first requirement of a network station under section 111(f)—that they be owned by or affiliated with a network—was not met, and the Tribunal concluded that public television stations are not network stations.

The Tribunal then considered the second argument: whether PBS programs aired on public television stations—which are not network stations—are nonetheless network programs. The Tribunal stated, ''We have looked at the record of this proceeding, which in our view establishes significant distinctions between the functioning of PBS and that of the commercial networks. We find that the operation of PBS in distributing programs is more akin to that of a program syndicator.'' *1978 Cable Royalty Distribution Proceeding,* 45 FR 63026, 63033 (Sept. 23, 1980). Because the Tribunal ruled, based on the facts, that PBS' distribution of programs is more akin to that of a program syndicator, it did not have to reach the legal question of whether a nationally distributed program appearing on a nonnetwork station is, as a matter of law, a nonnetwork program.

Given both the silence of the statute and the lack of Tribunal precedent, it cannot be said that the Panel acted arbitrarily or contrary to the provisions of the Copyright Act by ruling that Fox programming was nonnetwork programming for distribution purposes. The Panel approached the issue from the payment side and concluded that what is not a network for pay-in purposes must likewise not be a network for pay-out purposes. Ruling in favor of JSC's request would produce an incongruity in the statute, raising the question of why cable systems should pay the full royalty value for Fox stations (one DSE), when the copyright owners of Fox programming have no share in those royalties. The Panel's harmonization of the pay-out with the pay-in is neither arbitrary nor contrary to the Copyright Act.

Furthermore, even if the Register were inclined to recommend to the Librarian that the Panel's determination was contrary to the Copyright Act, there would be no factual record for the Librarian to substitute his own determination. The statute makes clear that the Librarian may conduct his review of the CARP's determination on the basis of the ''record created in the arbitration proceeding,'' and does not grant any responsibility or authority to the Librarian to make his own factual findings. 17 U.S.C. 802(f).

Consequently, the Panel did not err in ruling that Fox programming was eligible for a distribution of royalties, and JSC's petition to modify the CARP's ruling concerning Fox-distributed programs is denied.

C. The Mathematical Adjustment

The Devotional Claimants claim that, because of a mathematical mistake, the Panel, contrary to its stated intent, did not give the Devotional Claimants the same award as it received in 1989. Devotional Claimant's Petition to Modify at 2. They submit that the Panel's key finding with respect to them was that there was ''no change in circumstances'' from their showing in the 1989 cable royalty distribution proceeding. As a result the Panel awarded them 1.25% of the Basic Fund, and 0.95% of the 3.75% Fund, the same as in 1989. *Id.* at 3. However, because the awards in the 1989 cable royalty distribution proceeding were inclusive of the settlement of the Music Claimants, and the awards in this proceeding were exclusive of the settlement of the Music Claimants, the awards to the Devotional Claimants were actually a 5.62% reduction in the Basic Fund to an equivalent of 1.19% of the total Basic Fund and a 4.275% reduction in the 3.75% Fund to an equivalent of 0.91% of the 3.75% Fund.

Id. at 3–4. The Devotional Claimants ask the Librarian to correct this mathematical error and restore the Panel's intended award to the equivalent of what they received in the 1989 cable royalty distribution proceeding.

In reply, the Program Suppliers question the assumption of the Devotional Claimants that the Panel intended to give them the same award as in 1989. Program Suppliers Reply at 31. They note that the only evidence allowing for this inference is that the percentage awards are the same on their face. However, Program Suppliers assert that the Panel never explicitly stated they were awarding the Devotional Claimants the same award they received in 1989, and the Panel could have intended the actual 5.62% and 4.275% reductions that did in fact take place. *Id.* Further, Program Suppliers state that if, indeed, the Panel made a mathematical mistake with regard to the Devotional Claimants, they made the same mathematical mistake with regard to the Program Suppliers who facially received an even 55% award for all three years in the Basic Fund. *Id.* at 32. Program Suppliers conjecture that the Panel could have intended the Program Suppliers should receive 55% inclusive of the Music Claimants settlement, in which case their award would need to be 57.59% of the Basic Fund and 61.36% of the 3.75% Fund, instead of the 55% and the 58.6% they were awarded. *Id.*

The Canadian Claimants make a similar argument as the Program Suppliers, questioning the Devotional Claimants' basic assumption that the Panel intended to give them the same award as in 1989. Canadian Claimants Reply at 8–9. They note that the key evidence in this proceeding, the Nielsen study and the Bortz survey, were both offered exclusive of the music element, and the Panel could have intentionally made its award with full knowledge that it was exclusive of the Music Claimants' settlement. The Canadian Claimants further assert, as the Program Suppliers do, that if the Devotional Claimants deserve an upward adjustment, then all claimants deserve one, in which case an adjustment would be a wash. *Id.* at 9. Last, the Canadian Claimants argue that if the Librarian decides to make an upward adjustment for the Devotional Claimants, the increase must come from parties other than the Canadian Claimants because no devotional programming appeared on Canadian stations and the Canadian Claimants' award was derived from the fees generated by their signals. *Id.* at 10.

JSC make similar arguments. They question the Devotional Claimants' basic assumption, and, alternatively, argue that if it is true for the Devotional Claimants, it is true for them and all other claimants. JSC Reply at 44–45. Similarly, NAB states that if the mathematical mistake is true for the Devotional Claimants, it is true as well for NAB. NAB Reply at 25.

The Devotional Claimants are correct when they state that the Panel found no changed circumstances with regard to them, and that the Panel awarded them percentages that were identical on their face to their 1989 award. The other parties are equally correct when they state that nowhere did the Panel explicitly state that it intended to give the Devotional Claimants the same awards as in 1989. In addition, the parties are justified in positing that, perhaps, the Panel's calculations vis-a-vis the other claimants were similarly mathematically flawed, only less obviously so, because their final numbers happen to be different from those awarded in the 1989 cable distribution proceeding.

Because of these difficulties and the lack of adequate explanation, the Register questioned the Panel as to whether a mathematical mistake had been made as to the Devotional Claimants. In addition, the Register provided the Panel with a chart adjusting the final distribution figures to take account of the settlement reached by the Music Claimants and National Public Radio.

In response, the Panel stated that it intended to award 1.25% of the Basic Fund, plus the additional 0.01% for 1990, because it treated the distribution as if 100% of the cable royalties were involved in the proceeding, and did not consider the settlement of the Music Claimants for all three years as having a bearing on the distribution. Response at 3. The Panel asserted that it was proper to do this ''because the parties represented that the Panel should base its award on 100% of the fund, leaving it to the parties to adjust among themselves for settlements with non-participating parties.'' *Id.* The Panel was unable to provide a record citation for representation of the parties. *Id.* at 3–4.

The Devotional Claimants submit that the Panel's answer has made it unclear as to whether the Panel intended to award Devotionals the same share they received in 1989, and therefore underscores the arbitrariness of its action. Devotional Claimants Supplemental Petition at 3–4. In any event, the Devotional Claimants urge the Librarian to increase their award because ''it would be illogical and arbitrary for the CARP to have awarded Devotional Claimants less than they had been awarded in the 1989 determination. *Id.* at 6. Program Suppliers submit that the Panel's answer regarding the Devotional Claimants award underscores the entire report's lack of reasoned explanation, but submit that the Devotional Claimants' evidence does not merit an increase in their award. Program Suppliers Supplemental Petition Reply at 12–15.

The Panel did not act arbitrarily in its award to Devotional Claimants, but a mathematical adjustment must be made to all the distribution percentages determined by the Panel to reflect the total award of all royalties. The Copyright Royalty Tribunal always reported its distribution percentages for all parties receiving royalties, inclusive of those parties who had reached settlement. *See, e.g.* 1989 Cable Royalty Distribution Proceeding, 57 FR 15286 (April 27, 1992). The Panel should have done the same in this proceeding, especially since it did not offer any reasons why it was adopting percentages only for the parties before it, rather than considering the entire distribution. Further, the statute requires the Librarian to publish the distribution percentages for the *entire* cable royalty funds, and not only those amounts that were in controversy. 17 U.S.C. 802(f).

Accordingly, the Register recommends that the Panel's numbers are adjusted to account for the total distribution of the 1990–92 cable royalty funds:[7]

[7] The stipulated award to NPR of 0.18% is subtracted from the funds, as is consistent with CRT precedent. *See,* 1989 Cable Royalty Distribution Proceeding, 57 FR 15286, 15304 (April 27, 1992).

	Basic	Syndex
1990:		
Program Suppliers	52.6336250	95.5000000
JSC	28.2355000	.....
NAB	7.1820500	.....
Music Claimants	4.5000000	4.5000000
PBS	5.5049750	.....
Devotional Claimants	1.1938500	.....
Canadian Claimants	0.7500000	.....
1991–1992:		
Program Suppliers	52.5250000	95.5000000
JSC	28.1725000	.....
NAB	7.1625000	.....
Music Claimants	4.5000000	4.5000000
PBS	5.4912500	.....
Devotional Claimants	1.1937500	.....
Canadian Claimants	0.9550000	.....

The above adjustment to the Panel's numbers does result in a decline to the distribution for Devotional Claimants vis-a-vis its 1989 distribution percentage. However, the Panel did not state in its report, as the Program Suppliers, Canadian Claimants, JSC, and NAB correctly observe, that it intended the Devotional Claimants to receive the same percentage that they received in the 1989 proceeding. This position was confirmed by the Panel's Response to the certified questions where it stated that it intended for the Devotional Claimants to receive its award based upon only those royalties in the funds that were in controversy. Consequently, the Devotional's award, even after the mathematical adjustment, was not arbitrary.

D. The 3.75% Fund

JSC argue that the Panel erred in its allocation of the 3.75% Fund. First, they claim that the Panel acted arbitrarily when it rejected their proffered evidence concerning the allocation of the 3.75% Fund. Second, JSC claim that the Panel acted arbitrarily in denying them any share of the Canadian Claimants' award of 3.75% Fund royalties. Finally, JSC ask the Librarian to clarify the Panel's intent concerning the Canadian Claimants' 1990 share of the 3.75% Fund.

1. JSC's evidence. JSC claim that their proffered evidence on the higher value of sports programs on stations paid for by cable systems at the 3.75% rate was improperly rejected by the Panel. JSC Petition to Modify at 17–18. JSC state that they offered the testimony of Jerry Maglio, Senior Vice President for Marketing and Programming at United Artists Cable, on the value of sports on 3.75% rate signals, and a statistical analysis of the proportion of superstations on 3.75% rate stations, but that this proffered evidence was neither discussed nor evaluated. *Id.* (citing JSC's Proposed Findings of Fact and Conclusions of Law at 157–158).

Program Suppliers counter that the Panel did discuss Maglio's testimony on page 88 of the Report and the carriage of superstations on page 92 of the Report. Program Suppliers Reply at 24. Further, Program Suppliers argue that the discussion by the dissenting arbitrator of JSC's proffered 3.75% Fund evidence can lead to a reasonable inference that these matters were raised and considered by the entire Panel when it deliberated. *Id.*

On the merits, Program Suppliers argue that there is contrary record evidence that undercuts any conclusion that it is the presence of sports that creates the willingness on the part of cable operators to carry signals at the 3.75% rate. Such evidence includes the decline in the carriage of two sports flagship stations, WSBK and WPIX, and that the continued carriage of WTBS [8] and WGN has more to do with their being the first superstations in the country rather than solely their sports offerings. *Id.* at 24–25.

The Panel's discussion of its division of the 3.75% Fund is, at best, terse. The Panel states:

> The 3.75% fund established a royalty rate of 3.75% of gross receipts for newly permitted distant signals. Little new argument is made concerning its distribution. PTV is not a participant in this fund. We make these awards in a similar basis as the Tribunal in 1989. The allocations are as follows: Program Suppliers 58.6%, JSC 32.6%, NAB 7.5%, Devotionals 0.95% and Canadians 0.35%.

Report at 142. In order to determine the Panel's reasoning for these awards, the Register inquired of the Panel as to whether it took ''into account JSC's proffered evidence on the value of sports on 3.75% signals and Program Suppliers' counter arguments,'' and, if so, ''what reasons led the Panel to conclude that these presentations did not change the Panel's analysis concerning the allocation of 3.75% royalties.'' Certified questions 6–A, 6–B.

In response to whether the Panel considered JSC's evidence, the Panel stated that it ''took into account the evidence of Jerry Maglio.'' Response at 5. In answer to why this evidence did not change the Panel's conclusion regarding allocation of the 3.75% Fund, the Panel stated that ''we weighed that evidence and found that it was not persuasive.'' *Id.*

JSC do not contest the Panel's weighing of the testimony of Jerry Maglio, but submit that it was prejudicial for the Register to ask the Panel a question regarding its consideration of JSC's evidence while not asking similar question about other claimants' evidence. JSC Supplemental Petition at 5. Further, JSC argue that the Panel's sole mention of Jerry Maglio's testimony indicates that it overlooked other key evidence, and that the Librarian consequently should adopt the dissenting arbitrator's percentage for JSC. *Id.* at 5–6. Program Suppliers oppose JSC's request, arguing that JSC's evidence does not support an increase in its award. Program Suppliers Supplemental Petition Reply at 6–8.

The Panel has now responded to JSC's contention that its evidence was ignored by stating that it considered the testimony of JSC's witness on the 3.75% Fund, Jerry Maglio, and considered it not to be persuasive. It is troublesome that while the Panel has now identified the evidence that it considered, it declined to identify any reasons as to why it found Mr. Maglio's testimony unpersuasive. The 3.75% Fund represents approximately $45 million of the 1990, 1991, and 1992 funds, or a total of approximately $135 million. JSC Ex. 2, at 2. As the Court of Appeals said

[8] The record also shows that WTBS was heavily promoted on other Turner channels.

in an earlier royalty distribution proceeding, ''shorthand and tossaway, conclusory sentences are no way to handle a multi-million dollar proceeding.'' *National Association of Broadcasters v. CRT*, 772 F. 2d 922, 931 n.10 (D.C. Cir. 1985).

Nevertheless, the Panel did not act arbitrarily in its consideration of JSC's 3.75% evidence. As discussed earlier in this Order, the Librarian's scope of review is very narrow. This limited scope certainly does not extend to reconsideration of the relative weight to be accorded particular evidence, and the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it. *Motor Vehicle Manufacturers Association v. State Farm Mutual Auto Insurance Co.*, 463 U.S. 29, 43 (1983). As the Program Suppliers point out, the 3.75% fees generated for two major sports stations, WSBK and WPIX, declined between the second accounting period of 1983 and the second accounting period of 1992, and the relative position of all superstations other than WTBS and WGN dropped from 22% to 16%. Program Suppliers Reply Findings of Fact and Conclusions of Law at 15–16. The record is further unclear as to whether the relative strengths of WTBS and WGN were due solely to sports programming carried on those signals, or to other factors. In sum, JSC's arguments concerning its 3.75% evidence depended upon the Panel's judgment in ascertaining their merit, and that judgement should not be disturbed.

2. The Canadian Claimants' 1991 and 1992 3.75% award. JSC claim that the Panel erred by awarding the Canadian Claimants an amount of the 3.75% Fund that exceeded the 3.75% royalties paid by cable operators during 1991–1992 for Canadian signals. JSC Petition to Modify at 18–19. JSC begin their argument by noting that in making its award of the Basic Fund to the Canadian Claimants, the Panel seemed to accept the fee generation analysis proposed by the Canadians. Report at 140–141. According to that analysis, carriage of Canadian stations in the United States accounted for 1.95% of the royalties in the Basic Fund, and is 56% attributable to Canadian programs, 29% to sports programs, and 15% to U.S. movies and series. Report at 141.

Since it appears that the Panel accepted the fee generation approach for the Basic Fund, JSC reason that the Panel should have followed the same approach in evaluating the 3.75% Fund. JSC Petition to Modify at 19. However, although carriage of Canadian signals accounted for 0.31% of the 3.75% Fund, the Panel awarded the Canadian Claimants 0.35% of the 3.75% Fund, an amount higher than its fee generation. *Id.* In addition to awarding the Canadian Claimants more than 100% of their fee generation, the Panel did not carry through its analysis of the Basic Fund (in which 29% of the fees generated by Canadian signals were attributable to sports programming) and gave JSC a zero award of Canadian signal generated 3.75% royalties. *Id.* at 20. JSC assert that such a zero award is contrary to CRT precedent and was arbitrary, and request the Librarian award them 30% of the Canadian Claimants' 3.75% royalties. *Id.*

In support of JSC's claim, the Program Suppliers assert that should the Librarian agree that JSC should get 30% of the Canadians' 3.75% Fund award, the Program Suppliers should get a minimum of 15%, as well. Program Suppliers Reply at 26, n.12.

In reply, the Canadian Claimants argue the following: (1) JSC did not make a 30% claim to the Canadian Claimants' allocation of the 3.75% Fund during the hearings or in the findings and are precluded from doing so now; (2) it is possible the Panel may have foregone a strict fee generation analysis when it came to the 3.75% Fund, and JSC may have received its share of the 3.75% Canadian allocation as part of the increase the Panel gave JSC generally for 3.75%, which is permissible if fee generation is not required; (3) but if fee generation is required, it should be required across the board, including PBS whose fee generation in the Basic Fund ranges from 2.1% to 2.5%, depending on assumptions, not the 5.75% the Panel awarded it. Canadian Claimants Reply at 6–8.

The Register inquired how the Panel calculated the Canadian Claimants award. She asked ''if the Panel intended to make an allocation to the Canadian Claimants of the Basic Fund on the basis of fee generation, did it also intend to make an allocation to the Canadian Claimants of the 3.75% Fund on the basis of fee generation,'' and, if so, how did ''the Panel account for the award to the Canadian Claimants being greater than their fee generation of 3.75% royalties.'' If the Panel did not intend to use a fee generation analysis, the Register inquired as to the basis used by the Panel. Certified questions 6–C, 6–D, and 6–E.

The Panel replied by stating in response to all three questions that the allocation of 3.75% royalties that it made to the Canadian Claimants ''was an error.'' Response at 5. The Panel did not, however, make any attempt to substitute what it believed to be the correct percentage.

Canadian Claimants acknowledge that their 3.75% award exceeded the amount of fees that Canadian programming generated. Canadian Claimants Supplemental Petition at 5. They submit, however, that if a part of their 3.75% award must be shared with other parties based on the Panel's analysis for their basic award, then, to be consistent, their basic award must be increased to 1.1%. *Id.* at 6.

In reply, JSC argue that the Canadian 3.75% award was 113% of the fees generated by Canadian signals, and that they are only entitled to 51%, which is consistent with their Basic Fund award. JSC Supplemental Petition Reply at 8.

The Panel's response of ''error'' is troubling because it fails to shed any light on what the Panel's intended approach was to awarding the Canadian Claimants their share of 3.75% royalties. Was the Panel's error in awarding the Canadian Claimants more than 100% of their fee generation, or was the error in failing to allocate a share of the Canadian's 3.75% royalties to JSC and Program Suppliers, or both?

It appears that the Panel's error was not in the total amount of 3.75% royalties attributable to Canadian signals (0.35%), but rather in the allocation of those royalties among JSC, Program Suppliers and the Canadian Claimants. As the Canadian Claimants point out, the Panel did not follow a strict fee generation analysis for any of the claimants in determining Basic Fund awards, and actually awarded PBS an amount that was two and a half times the amount generated by PBS signals under a fee generation analysis. Canadian Claimants Reply at 8. The award of 0.35% to the Canadian Claimants for 3.75% royalties is not at great variance with the 0.31% the Canadians requested, and falls within the zone of reasonableness. *See, National Association of Broadcasters* v. *CRT*, 772 F.2d 922, 930 (D.C. Cir. 1985). The error committed by the Panel, therefore, rests in its failure to properly allocate the 0.35% of 3.75% royalties generated by Canadian signals among JSC, Program Suppliers and the Canadian Claimants.

In allocating the 0.35% share of 3.75% royalties among JSC, Program Suppliers and the Canadian Claimants, the Panel's approach used in making the Basic Fund award to the Canadians is adopted. The Panel found that 29% of the programming on Canadian signals was attributable to JSC, and 15% was attributable to Program Suppliers. Report at 140–141. The remainder

(56%) was attributable to Canadian Claimants. *Id.* at 141. There is no reason to expect that these percentages would be different for Canadian signals paid for at the 3.75% rate, and the parties did not present any evidence to indicate such. *See* Canadian Claimants Findings of Fact at 82–83, 96. Those percentage are therefore used to adjust the allocation of the 3.75% Funds for 1991 and 1992. The final allocation of those funds should be as follows:[9]

	3.75% royalties
Program Suppliers	56.0131375
JSC	31.2299325
NAB	7.1625000
PBS.	
Music Claimants	4.5000000
Devotional Claimants	0.9072500
Canadian Claimants	0.1871800

3. The Canadian Claimants' 1990 3.75% award. JSC note that on pages 142–143 of the Panel's Report, the Panel announced its decision to award the Canadian Claimants 0.35% of the 3.75% Fund, but is silent as to whether that applies to 1990–92, or just the years for which the Canadian Claimants had a controversy, 1991–92. JSC Petition to Modify at 21. JSC ask the Librarian to clarify that the Panel's intent was simply to make an award for those years that were in controversy. *Id.* JSC further ask the Librarian to reallocate the Canadian Claimants' share of the 3.75% Fund among the other claimants, in proportion to each claimant's share of the 3.75% Fund. *Id.* at 21–22. JSC's motion is supported by NAB which asks for an increase of 0.03% in its 3.75% Fund award. NAB Reply at 24.

In reply, the Canadian Claimants do not claim more than their settled amounts for 1990, but want a declaration that their settled amount for 1990 is assured in both the basic and the 3.75% Fund. Canadian Claimants Reply at 7, n.4.

The Canadian Claimants reached a settlement with all the other parties of their claim for 1990 in which they received 0.75% of the Basic Fund and 0.25% of the 3.75% Fund. The parties notified the Librarian of this settlement and it is assured, as a matter of law. Therefore, the Panel did not have the authority to alter the Canadian Claimants' share of the 1990 3.75% Fund. Moreover, the Panel does not assert such authority. Report at 142–143. Accordingly, the awards listed on page 142 and the allocation table on page 143 are read as making an award of 0.35% of the 3.75% Fund to the Canadian Claimants for 1991 and 1992 only.

However, having concluded that the Canadian Claimants' award in the 3.75% Fund for 1990 is, as a matter of law, 0.25%, the total allocation for the 1990 3.75% Fund is now 99.90% (excluding the Music Claimants settlement), and an adjustment must be made. JSC and NAB have asked that the adjustment be pro rata among the other claimants that have entitlement to the 3.75% Fund. This is the proper basis, and the reallocation should be made accordingly.

E. The NAB Award

1. Program miscategorization. NAB argues that the Panel acted arbitrarily in failing to correct the Nielsen study for miscategorized programs when it awarded NAB a percentage equal to its viewing share. NAB Petition to Modify at 2. NAB notes that the Panel concluded that ''NAB's programming was previously undervalued'' by the Copyright Royalty Tribunal in its 1989 cable distribution, and then stated that ''NAB [programs] attracted and retained subscribers at a level equal to its viewing.'' Report, at 112–113. According to NAB, the Panel considered that a percentage equal to NAB's viewing was 7.5%, halfway between the range of 7% to 8% which the Panel found was NAB's Nielsen viewing for 1990–92. Because the Panel intended to award NAB its Nielsen viewing share, NAB contends that it should have corrected the study for miscategorized programs which properly belonged to NAB. *Id.*

NAB notes that when the Tribunal considered the relative weight to assign the Nielsen study, it first corrected the study for all perceived deficiencies and miscategorizations. *Id.* at 4. The Panel failed to do this, in NAB's view, and was wrong when it stated that it was ''unpersuaded that the criticisms involving miscategorization and nonresponse rate have any real measurable effect on the validity of the results.'' Report at 42–43. NAB states it offered the measurable effect of the miscategorized NAB programs, and that the Panel was arbitrary in ignoring this effort. *Id.* at 5. Last, NAB argues that the Panel was particularly arbitrary in disregarding the miscategorized programs because, with one exception, NAB's evidence on their miscategorization was not challenged. *Id.*

The one program categorization that was challenged concerned ''National Geographic Explorer.'' *Id.* at 7–10. Program Suppliers asserted that ''National Geographic Explorer'' was syndicated as ''National Geographic On Assignment.'' *Id.* at 8. NAB asserts that ''National Geographic on Assignment'' is a re-packaged, but separate program from ''National Geographic Explorer,'' and although ''National Geographic On Assignment'' is a Program Supplier syndicated series, ''National Geographic Explorer'' remains a station-produced program belonging in the NAB category. *Id.* at 9.

Program Suppliers disagree with NAB's conclusion that the Panel intended to award them their viewing share, and disagree with NAB's assertions regarding ''National Geographic Explorer.'' First, Program Suppliers question NAB's assumption that the Panel gave NAB a one-to-one correlation between its Nielsen figures and its final award, noting that at an earlier section of the Report, the Panel referred to the Nielsen study ''merely as a reference point and not as an absolute value.'' Program Suppliers Reply at 3. Further, Program Suppliers argue that NAB did not carry its burden to show the Panel how the miscategorizations affected the Nielsen numbers, because NAB did not give the Panel a final exhibit with all the numbers calculated; absent such a showing, the Panel could properly reject NAB's argument. *Id.* at 5–7. Second, Program Suppliers assert that ''National Geographic Explorer'' does belong to the Program Suppliers category under a Tribunal exception for a program produced by or for WTBS comprising predominantly of syndicated elements. In addition, Program Suppliers assert that there are two programs, ''Night Tracks'' and ''Thirty Years of Andy: A Mayberry Reunion,'' that were improperly classified as station-produced programs belonging in the NAB category when they should have been classified as syndicated shows belong in the Program Suppliers category. When the effect of ''National Geographic Explorer,'' ''Night Tracks'' and ''Thirty Years of Andy: A Mayberry Reunion'' are added together, Program Suppliers assert that the final effect is a wash for both parties. *Id.* at 5–9.

JSC agrees with Program Suppliers that the Nielsen study data were taken ''with a grain of salt'' and as a ''reference point,'' rather than on a one-to-one basis. JSC Reply at 49–50. However, should the Librarian agree with NAB that the miscategorizations were material and deserving of an adjustment, the JSC argue that the adjustments should come entirely from the Program Suppliers category because they were originally classified as belonging to Program Suppliers and

[9] These figures represent the final overall award, which includes the Music Claimants settlement.

should not result in a lower JSC award. *Id*. at 50.

One of the Register's certified questions to the Panel asked whether the Panel intended ''to give an award to NAB equal to its share of the Nielsen study,'' and, if not, to describe what other factors entered into the award. Certified questions 3–A, 3–B. In response, the Panel stated that the 7.5% award to NAB represented the fair market value of NAB's programming, and therefore was not intended as a measure of its Nielsen viewing. Response at 4.

NAB renews its request that it be awarded its Bortz survey share of 12.6%, but submits that the Panel's response confirms that it is entitled to no less than its corrected Nielsen viewing share of 9.3%. NAB Supplemental Petition at 3–4. Program Suppliers counter that NAB is not entitled to its Bortz survey results because its evidence did not corroborate those results. Program Suppliers Petition Reply at 10. Program Suppliers also argue that the Panel committed error by stating that it found NAB's programming to be ''previously undervalued'' with respect to the 1989 award, because the Panel cannot reevaluate prior decisions of the CRT. *Id*. at 11–12.

The Panel did not act arbitrarily in awarding NAB a 7.5% share. The Panel has clarified that it did not intend to award NAB its Nielsen viewing share, but was only using those numbers as a reference point for determining the award. The Panel's use of the so-called ''uncorrected'' Nielsen numbers is also not erroneous, even though those numbers were used as only a reference point. The Panel, in addressing the miscategorization issue, stated that ''none of the witnesses were able to articulate what effect, if any, these alleged problems had on the survey results,'' and concluded that it was ''unpersuaded that the criticisms involving miscategorization and nonresponse rate have any real measurable effect on the validity of the [Nielsen] results.'' Report at 42–43. NAB did not present any evidence to the Panel as to how the programs which it alleges are miscategorized would change its Nielsen numbers, and NAB's post-hoc rationalization in its Petition to Modify is not acceptable. *See, Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 419 (1971).

2. Corroboration of the Bortz survey. NAB claims that the Panel arbitrarily rejected its evidence corroborating the Bortz survey. NAB claims that the Panel stated that it would not award NAB the results it received in the Bortz survey, because ''NAB [did] little to corroborate Bortz.'' Report at 112. NAB argues that, on the contrary, it presented much evidence to corroborate its results in the Bortz survey. They include: (a) subscribers' letters and calls when distant signals are dropped; (b) analogous demand for the CNN cable channel; (c) actions taken by subscribers to avoid losing distant signal news programs; (d) independent research on ''parasocial interaction,'' meaning strong personal attachment to news programs and personalities; (e) a 1991 study commissioned by WTBS finding that subscribers value station-produced newsbreaks and other informational programs; (f) a 1992 study by Beta Research Corporation finding that subscribers highly value cable networks featuring news and other information; (g) subscriber valuation surveys conducted for the 1983 distribution proceeding; (h) evidence of clustering of distant signal carriage in regions close to the market of the station being carried, where interest in news of the community is greatest; and (i) cable operator testimony, including operators testifying for other Phase I categories. NAB Petition to Modify, Attachment A at 64, 134, 152–163.

Program Suppliers counter that NAB did not corroborate NAB's results in the Bortz survey. Program Suppliers characterize NAB's analogy to CNN's license fees as creating an unfair comparison with compulsory license fees, and that the comparison was dismissed by the Panel as ''overstated'' and ''of little value.'' Program Suppliers Reply at 9–10. Program Suppliers fault NAB for not presenting any data concerning the actual prices paid for station-produced programs in the syndication marketplace. *Id*. at 10. They also state that to show audience avidity is not enough; it must be greater avidity than shown for the other types of programs being compared in Phase I in order to get an increased award. *Id*. Lastly, Program Suppliers consider the Panel's conclusion that there were no changed circumstances as dispositive of NAB's claim for a higher award. *Id*. at 10–11.

JSC submit that if the Librarian believes NAB should get an award equal to its Bortz results, so should JSC. JSC Reply at 51. The Canadian Claimants state that if the Librarian believes NAB's award should be upwardly adjusted, that should not affect the Canadian Claimants' award because no NAB programming was shown on Canadian distant signals. Canadian Claimants Reply at 10–11.

The Panel did not act arbitrarily in rejecting NAB's evidence purporting to corroborate NAB's results in the Bortz survey. In the section entitled ''Analysis of and Award to the NAB,'' the Panel stated that it could not accept NAB's proffered analogy to CNN for the reasons given by Program Suppliers, which was, that it was an unfair comparison between CNN's license fees and compulsory license fees which are limited by law. Report at 112. Further, the Panel stated that NAB's evidence from the Opinion Research study, about ''parasocial interaction,'' and about regional clustering, was credible. But it nonetheless rejected these as justifying an increase for NAB, because it found them to be at the same level as prior to 1990–92—no changed circumstances. Report at 112. Although each and every one of NAB's proffered evidence could have been described by the Panel, the more important evidence was discussed sufficiently to support the Panel's determination.

F. The Devotional Claimants Award

The Devotional Claimants claim the Panel ignored record evidence and/or rejected certain arguments that were accepted for other claimants, that would have supported an increased award to the Devotional Claimants.

First, the Devotional Claimants assert that the Panel erred when it discounted the Bortz survey results for the Devotional Claimants because, ''The Tribunal in 1989 found, as we do also, that the price of the programs is much less than what the cable operator is willing to spend.'' Report at 130. To have made this finding, the Devotional Claimants contend that the Panel would have had to ignore the unrebutted evidence of Dr. David Clark and Mr. Michael Nason who testified that devotional programmers would carefully negotiate to obtain a market price if a free market did exist in distant signal retransmissions. Devotional Claimants Petition to Modify at 7–8. The Devotional Claimants submit that PBS witness, Dr. David Scheffman, conceded there was no reason to discount the Devotional Claimants' award for any ''supply-side'' considerations. *Id*. at 8. The Devotional Claimants further contend that to discount their award for lack of pricing is another way of saying that their award should be discounted for lack of ''harm.'' *Id*. But the Panel re-evaluated ''harm'' in this proceeding and found all claimants equally harmed. Therefore, the Devotional Claimants contend, the Panel acted illogically when it continued to discount their award for lack of pricing. *Id*.

Program Suppliers reply that there was countervailing record evidence to rebut the testimony of Clark, Nason and

Scheffman. Program Suppliers Reply at 33–34. JSC contend that while the Panel discounted the Bortz survey results for the Devotional Claimants by 2–3%, it discounted the Bortz survey results for the JSC by 7–10%, and both are equally illogical. However, in the JSC's view, the Panel acted within its discretion to weigh the evidence, and this weighing is not subject to review. JSC Reply at 47.

Second, the Devotional Claimants contend that their evidence corroborative of the Bortz survey was ignored by the Panel while similar evidence was credited to other parties. For example, the Devotional Claimants assert that: (1) while the Panel credited PBS for its increased share in the Nielsen study, the Panel did not credit the Devotional Claimants for its increased share in the Nielsen study; (2) while the Panel credited the JSC for the testimony of cable operators Myhren and Maglio on behalf of sports, the Panel did not credit the Devotional Claimants for the testimony of cable operators Engel and Searle on behalf of devotional programming; (3) while the Panel credited the JSC and NAB with their showings related to the intensity or avidity of viewership, the Panel did not credit the Devotional Claimants' evidence of avidity of viewership; (4) while the Panel credited the JSC and PBS with the marketplace value of analogous program channels, such as ESPN and Arts and Entertainment, the Panel did not credit the Devotional Claimants for the marketplace value of such analogous program channels as the Family Channel and the Faith and Values network; and (5) while the Panel gave increases to all other parties who relied on the Bortz survey—JSC, NAB, and PBS—it gave no increase to the Devotional Claimants, the only other party who relied on the Bortz survey, Devotional Claimants Petition to Modify at 10–14.

In reply, Program Suppliers note that the Nielsen figures for 1989 cannot be compared with 1990–92 because of the change from a diary-based study to a meter-based study. Therefore, instead of concluding that the Panel should have credited the Devotional Claimants with an increase in their Nielsen share, the Panel erred when it credited PBS with an increase in their Nielsen share. Program Suppliers Reply at 37. Further, Program Suppliers state that the Devotional Claimants mathematically exaggerated their increase in the Nielsen study. *Id*. In addition, Program Suppliers argue that the opinion testimony of the cable operators was not rejected, but was discounted for not being quantified by the Devotional Claimants. *Id*. at 38. As for the analogous cable channels, Program Suppliers assert that the Family Channel consists more of movies and television series than devotional programming. *Id*. at 39.

JSC also argue that the 1989 Nielsen study and the 1990–92 Nielsen studies are not comparable because they are based on different methodologies. JSC Reply at 48. NAB agrees with the Devotional Claimants that the Panel ignored their evidence corroborative of the Bortz survey, just as the Panel ignored, NAB asserts, NAB's corroborative evidence, and that both the Devotional Claimants and NAB deserve higher adjustments for their corroborative evidence. NAB Reply at 26.

Third, the Devotional Claimants contend that their fee generation analysis for religious specialty stations was ignored, and that there is no basis for the Panel to have given the Devotional Claimants a different award in the Basic Fund and the 3.75% Fund. Devotional Claimants Petition to Modify at 14.

Program Suppliers contend that the specialty station fee generation analysis was used by the Panel, but discounted. Further, the specialty station fee generation analysis shows the basis for why the Panel gave a different award to the Devotional Claimants in the Basic Fund and the 3.75% Fund, because specialty stations are never carried at the 3.75% rate. Program Suppliers reply at 39–40. JSC makes the same point justifying the different awards to the Devotional Claimants in the Basic Fund and the 3.75% Fund. JSC Reply at 49.

The Panel did not act arbitrarily in its award to the Devotional Claimants. First, the Panel did not err in reaching its conclusion that the price of Devotional programs is less than what the cable operators state in the Bortz survey they are willing to spend. The Panel made findings based on record evidence in support of this conclusion when it recited the criticism offered by the Program Suppliers that ''Devotionals pay stations for air time and argue this practice indicates a lower value for devotional programming compared with other programs.'' Report at 129.

Second, the Panel did not act arbitrarily in considering what appears to be similar evidence differently. When a decision-making body weighs evidence, it may often decide to accept one piece of evidence but reject another, even though they appear similar. *Anderson* v. *Bessemer City*, 470 U.S. 564, 574 (1985). For example, it is within the Panel's discretion to accept the testimony of one cable operator, but not another. It is also within the Panel's discretion to consider one cable channel analogous to one claimant, but find that another cable channel is not analogous to another claimant. Program Suppliers and JSC give creditable reasons why the Panel made its distinctions concerning the Devotional Claimants. While the Panel's explanation was less than compelling, in its section called ''Analysis and Award to the Devotional [Claimants],'' enough can be gleaned from it to support the conclusion that the Panel rationally weighed the differences in seemingly similar evidence.

Third, the Panel did not act arbitrarily in reaching its conclusion that the award in the Basic Fund to the Devotional Claimants should be 1.25% because it found in the findings of fact that ''the specialty station royalties for the three years at issue represent less than 1% of the total royalty pool, and are thus consistent with Devotionals' low viewing shares.'' Report at 129. Further, the Panel incorporated by reference the Tribunal's reason for giving the Devotional Claimants disparate awards in the basic and the 3.75% Funds; that is, that religious specialty stations are not paid for at the 3.75% rate, and therefore, the Devotional Claimants 3.75% Fund award should be correspondingly reduced. Report at 142.

G. The Canadian Claimants Award

In her review of the Panel's Report, the Register discovered what appeared to be a discrepancy in the Basic Fund award to the Canadian Claimants. Specifically, the Report contained language indicating that the Panel would award the Canadian Claimants a 1.1% share of the Basic Fund, but then awarded the Canadian Claimants only a 1.0% share. The Report stated:

> More specifically, the Canadians claim that approximately 1.95% of all basic royalties is for the carriage of Canadian stations. Of that number, JSC should receive 29%, Program Suppliers should receive 15%, and the balance (56%) should be allocated to the Canadians. This 56% is equal to 1.1% of the basic royalties.
>
> The Panel believes that the analysis for this category should be the same as for the other categories. The Bortz survey shows cable system operators value Canadian programming at .3%. This number is totally unreliable as Mr. Bortz suggests that the small numbers are incapable of being accurately measured. The other quantitative evidence we have is the fees generated. While there is a great deal of criticism, particularly by PTV, concerning acceptance of the fee-generated method, we see no other significant evidence to dispute the claim of the Canadians.
>
> We allocate 1% of the Basic Fund to the Canadians for the years 1991 and 1992.

Report at 140–141.

In light of this language, the Register certified questions to the Panel to determine its intent. The Register inquired as to whether the Panel intended ''to make an award to the Canadian Claimants on the basis of fee generation,'' and, if so, how did the Panel ''account for the discrepancy between 1.1% and 1.0%.'' Certified questions 5–A, 5–B. Finally, if the Panel did not intend to use fee generation, the Register inquired as to what other factors went into the fashioning of the award.

In response, the Panel stated that it ''did not wish to use a fee generation method.'' Response at 5. Instead, the Panel noted that while the Canadian Claimants requested 1.1% of the Basic Fund, it was ''[our] collective judgment that, based on past proceeding, an increase of one-third [from the 1989 percentage] was a sufficient increase, so [we] concluded that one percent was the appropriate marketplace value.'' *Id*. The Panel concluded by stating that ''[w]hile we tried to distance ourselves from the fee generated [sic] method, by the first sentence in the second quoted paragraph, we certainly used that method in reaching our conclusion.'' *Id*.

The Canadian Claimants argue that it was error for the Panel not to use the fee generation approach and award the Canadian Claimants 1.1% of the Basic Fund because ''the Panel's Report and Response indicate that they accepted our factual findings and conclusions. . . .'' Canadian Claimants Supplemental Petition Reply at 3; Canadian Claimants Supplemental Petition at 2–3. Further, the Canadian Claimants argue that the Librarian is prohibited from reducing the Canadians award in any way ''because no party sought its reduction.'' Canadian Claimants Supplemental Petition at 2.

In reply, Program Suppliers challenge the Canadian Claimants contention that their award cannot be reduced, noting that there is no statutory provision in the Copyright Act, unlike the Natural Gas Act and Federal Power Acts, which preclude the Librarian from considering an issue or award not raised by the parties. Program Suppliers Supplemental Petition Reply at 2–3. JSC submit that there is nothing in the Panel's report or responses to the certified question that indicate that the Panel accepted the Canadian Claimants' evidence in its entirety, and that to request the Librarian at this stage, and not in the initial petitions to modify, for an increase in award is untimely. JSC Supplemental Petition Reply at 7–8.

Having clarified that it was the Panel's intention to award the Canadian Claimants 1.0% of the Basic Fund, the award is reasonable. The Copyright Royalty Tribunal was accorded a substantially broad ''zone of reasonableness'' in making its determinations, *see National Association of Broadcasters* v. *CRT,* 772 F.2d 922 (D.C. Cir. 1985), and the Canadian Claimants' award falls within this zone, since they received 0.75% in the 1989 distribution proceeding and were requesting 1.1% in this proceeding. Further, as JSC correctly point out, there is nothing in either the Panel's Report or Response to the certified questions that indicates that the Panel accepted the Canadians' case in its entirety and intended to award them their requested share of 1.1%.

H. The PBS Bortz Adjustment

PBS makes a technically complex argument alleging that the Panel acted arbitrarily in not adjusting its Bortz share in this proceeding. PBS submits that the Panel should have made an upward adjustment in its award to account for the fact that it does not receive any royalties in the 3.75% Fund. Although PBS made a similar adjustment argument to the Tribunal in the 1989 proceeding, which was expressly rejected by the Tribunal, PBS argues that it presented new evidence and argument for adjustment in this proceeding, thereby precluding the Panel from properly relying upon the Tribunal's rejection rationale.

The Panel's analysis of its award to PBS begins with an examination of the raw numbers from the Bortz survey for the PBS category: 2.7% of the royalty fund for 1990, 2.9% for 1991 and 3.0% for 1992. Report at 115–116. The Panel then notes the principal arguments made by PBS for adjusting these numbers upward. The first adjustment was something called the zero value methodology, which attempted to account for the cable operator respondents in the Bortz survey that did not actually import a distant PBS signal. The Panel accepted this adjustment, though somewhat reluctantly. Report at 123 (''The automatic-zero adjustment proposed by Dr. Fairley troubles the Panel.''). The Panel then analyzed PBS's analogous marketplace adjustment argument, giving that credit as well. *Id*. Finally, and this is significant to PBS's claim of arbitrary action, is the Panel's handling of PBS's proposed adjustment to account for its zero award in the 3.75% Fund.

PBS's position is the following: The Bortz survey numbers, even after the zero value methodology and analogous marketplace adjustments, are not accurate. Unlike the other claimants, PBS does not receive an award from the 3.75% Fund because none of its stations are carried by cable operators at the 3.75% royalty rate. Thus, PBS only receives an award from the Basic Fund, which represents about 75% of the total royalty pool (the 3.75% Fund representing the other 25%). An award of 6% of the total royalty fund (which represents PBS's adjusted Bortz share) is only 6% of 75% of the total fund, since PBS receives no 3.75% award. Thus, an award of 6% actually works out to be less than 6% when the total fund is considered. PBS therefore submits its award must be raised to roughly 7% total, so that its award when the total royalty pool is considered amounts to 6%. PBS Petition to Modify at 6–8, 12.

In the 1989 proceeding, the Tribunal rejected this argument, noting that the Bortz survey did not require cable operators to allocate value to program categories based on their actual compulsory license copyright payments, but rather based on a hypothetical programming budget. 57 FR 15286, 15295 (April 27, 1996). The operators were therefore allocating PBS percentage of the programming budget on 100% of the royalty funds in this proceeding, not the 75% of the funds that PBS alleges.

PBS now submits that it has presented a reconstituted version of its adjustment argument in this proceeding, arguing that not only is it entitled to an adjustment of the Bortz results, but that all parties must be adjusted upward. PBS Petition to Modify at 10. The Panel rejected this argument ''for the same reason given by the Tribunal in the 1989 proceeding.'' Report at 124. PBS asserts that the Panel acted arbitrarily in applying this reasoning because PBS submits that it has presented a new argument, with attending evidence showing how the other parties' shares of the Basic Fund must be adjusted upwards to reflect their true Bortz shares. *Id*. at 11.

NAB concurs with PBS's logic, and believes that they, too, are entitled to an upward adjustment. NAB Reply at 24. JSC states that if PBS's Bortz share goes up, its share must increase as well. JSC Reply at 51–52. Devotional Claimants do not address PBS's argument. The Canadian Claimants and Program Suppliers object to PBS's position, submitting that it is nothing more than a rehash of the argument made to the Tribunal in 1989. Canadian Claimants Reply at 13–14; Program Suppliers Reply at 11–12. Program Suppliers argue that PBS's asserted difference between adjusting only its share of the

Basic Fund in the 1989 proceeding, and adjusting all parties share in the current proceeding, is ''a distinction without substance.'' Program Suppliers Reply at 15. They note that no matter the adjustment, the Panel did not accept PBS's Bortz share as determinative of its award, nor did it announce an intention to do so. Because it did not accept Bortz as determinative, PBS's post-Panel adjustment is not proper. *Id*.

The Panel did not act arbitrarily in rejecting PBS's Bortz adjustment for the same reasons articulated by the Tribunal in 1989. Whether an adjustment in the Basic Fund award is made for only one party (PBS), or all parties, the approach used in the Bortz survey itself remain unchanged. As in the 1989 proceeding, Bortz did not ask cable operators to base their program share allocation according to the royalties they actually paid. Thus, in awarding PBS programming a specific share, a cable operator did not take into account that its stated share only applied to the Basic Fund and not the 3.75% Fund, since PBS does not receive a 3.75% share. The Bortz survey numbers therefore do not necessarily require the adjustment demanded by PBS. Thus, the Panel was reasonable in adopting the Tribunal's 1989 rationale because PBS's argument, and the design parameters of the Bortz survey, were fundamentally the same.

Furthermore, as Program Suppliers correctly note, the Panel did not state that it was using PBS's Bortz numbers as the sole means of determining its award. In fact, the Panel awarded PBS a share that is less than the unadjusted Bortz survey numbers. Had the Panel stated that it was attempting to award PBS its Bortz share, then PBS's argument might have some validity. However, since the Panel did not, it did not act arbitrarily in denying PBS's requested adjustment.

I. The Unified Award

One issue that troubled the Register in her review of the Panel's Report was its decision to make the same award to each party for all three years, Report at 26, even though some of the parties had requested different awards for different years and had presented different evidence for each year to support those requests. *See, e.g.*, Direct Case of JSC (requesting Basic Fund awards of 31% for 1990, 33% for 1991 and 35% for 1992).

The Register certified a question to the Panel regarding its decision to make a unified award. The Register asked whether the parties had stipulated that they wanted a unified award for the period, and if so, where was that in the record. The Register then asked if the parties did not so stipulate, what were the reasons supporting the Panel's decision. Certified questions 2–A, 2–B, and 2–C.

In response, the Panel stated:

> The parties advised the Panel during the course of the proceedings that the Panel could either make three separate awards or one combined award. The Panel chose the latter. The Panel cannot point specifically to a page in the record that says that. It is not certain that when that statement was made the court reporter recorded that statement. However, the Panel's understanding is supported by the fact that none of the claimants objected to the single award.

Response at 4.

Surprisingly, none of the parties commented upon the Panel's answer in either their supplemental petitions or replies.

Section 111 of the Copyright Act establishes that the Copyright Office shall collect cable compulsory license fees semiannually, but that the distribution of those fees shall be annual. Each July, claimants file their claims to the previous year's royalties. Distributions then occur annually. Where there are no controversies, the entire year's fund is distributed. Where there are controversies, the Librarian of Congress convenes a CARP to resolve those disputes.

The statute describes the distribution of royalties in terms of an annual process. The statute is silent as to whether more than one year's fund may be combined into a single distribution process. Both the Library and all of the parties in this proceeding believe that a consolidation of proceedings is permissible and proper, and that was done in this proceeding by consolidating the 1990, 1991 and 1992 cable royalty funds into a single proceeding. 60 FR 14971 (March 21, 1995). The statute is also silent as to whether, in a consolidated proceeding, a unified award may be made. At the beginning of this proceeding, it is apparent that the parties assumed that the Panel would be making separate awards to each of the claimants for each of the three years, since they presented separate evidence for each year and requested different percentages of royalties for each year. However, that assumption apparently changed somewhat during the course of the proceedings, and only some of the parties continued to present evidence for separate awards in their proposed findings. *See* Proposed Findings of JSC. Further, in its response to the certified questions, the Panel stated that a representation was made during the course of the proceedings that a unified award could be made. None of the parties have challenged the accuracy of the Panel's statement in their supplemental petitions.

It is telling that none of the parties have challenged the Panel's unified award, even when expressly presented the opportunity to do so on two occasions through the original and supplemental petitions to modify. The cable royalties involved in this proceeding are, of course, their money, and apparently none of them have a problem with the unified award. Because the statute is silent, it cannot be said that the Panel acted contrary to the provisions of the Copyright Act. Likewise, it cannot be said that the Panel acted arbitrarily when all of the parties in this proceeding have supported, if not in fact requested, the making of a unified award.

Conclusion

For the above stated reasons, the Register recommends that the following should be the percentages for distribution of the 1990–1992 cable compulsory license royalties:

	Basic	3.75%	Syndex
1990:			
Program Suppliers	52.6336250	56.0125439	95.5000000
JSC	28.2355000	31.1605620	
NAB	7.1820500	7.1688409	
Music Claimants	4.5000000	4.5000000	4.5000000
PBS	5.5049750		
Devotional Claimants	1.1938500	0.9080532	
Canadian Claimants	0.7500000	0.2500000	
1991–1992:			
Program Suppliers	52.5250000	56.0131375	95.5000000
JSC	28.1725000	31.2299325	

	Basic	3.75%	Syndex
NAB	7.1625000	7.1625000	
Music Claimants	4.5000000	4.5000000	4.5000000
PBS	5.4912500		
Devotional Claimants	1.1937500	0.9072500	
Canadian Claimants	0.9550000	0.1871800	

II. Order of the Librarian of Congress

Having duly considered the recommendation of the Register of Copyrights regarding the report of the Copyright Arbitration Royalty Panel in the distribution of the 1990–1992 cable royalty funds, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision in part and reject it in part. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing an order setting the distribution of cable royalty fees. After deducting National Public Radio's 0.18% share per its agreement with the other parties to this proceeding, IT IS ORDERED that the 1990–1992 cable compulsory license royalties shall be distributed according to the following percentages:

	Basic	3.75%	Syndex
1990:			
Program Suppliers	52.6336250	56.0125439	95.5000000
JSC	28.2355000	31.1605620	
NAB	7.1820500	7.1688409	
Music Claimants	4.5000000	4.5000000	4.5000000
PBS	5.5049750		
Devotional Claimants	1.1938500	0.9080532	
Canadian Claimants	0.7500000	0.2500000	
1991–1992:			
Program Suppliers	52.5250000	56.0131375	95.5000000
JSC	28.1725000	31.2299325	
NAB	7.1625000	7.1625000	
Music Claimants	4.5000000	4.5000000	4.5000000
PBS	5.4912500		
Devotional Claimants	1.1937500	0.9072500	
Canadian Claimants	0.9550000	0.1871800	

As provided in 17 U.S.C. 802(g), the period for appealing this Order to the United States Court of Appeals for the District of Columbia Circuit is 30 days from the effective date of this Order.

Dated: October 22, 1996.

So Recommended.

Marybeth Peters,

Register of Copyrights.

So Accepted and Ordered.

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–27573 Filed 10–25–96; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses and recertification. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the Federal Register.

The following persons have been appointed to serve as members/alternates of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Eugene Kinlow, Gary F. Davis, Patricia G. Norry, Patricia Cornwell-Johnson, and Hilda Rodriguez, from October 28, 1996 to October 28, 1998.

DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Executive Officer, National Capital Planning Commission, 801 Pennsylvania Ave, N.W., Suite 301, Washington, D.C. 20576, (202) 482–7213.

Sandra H. Shapiro,

General Counsel.

[FR Doc. 96–27601 Filed 10–25–96; 8:45 am]

BILLING CODE 7502–02–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology (1136)—(Panel B).

Date and Time: November 13–15, 1996, 8:30 a.m. to 6:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Eve Barak or Dr. Eliot Herman, Program Directors for the Cell Biology Program, National Science Foundation, Room 655 South, Arlington, VA 22230. Telephone: 703/306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Cellular Organization Program as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27507 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering.

Date and Time: November 12, 1996; 8:30 a.m. to 5:00 p.m.; November 13, 1996; 8:30 a.m. to 2:30 p.m.

Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering (CISE), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda:

(1) Discuss reports of CISE Research and Education and Human Resources Review Team Reports
(2) Review status of CISE Organizational Review Committee Report
(3) Discuss status of CISE and NSF Strategic Planning

Dated: October 21, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27513 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers.

Date/Time: November 14, 1996, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27512 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Geosciences (1755); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Dates: November 13-14, 1996.

Time: 8:30 a.m.–5:00 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas J. Baerwald, Deputy Assistant Director for Geosciences, Suite 705, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1502.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

NSF update from the Director and/or Deputy Director
GEO update from the Assistant Director for Geosciences
GEO long-range planning
GEO COVs for FY 1996 (Earth Sciences and Upper Atmosphere)
Mangement of interdisciplinary science linking GEO and other directories
Developments in geoscience education planning
Strategies for working within the GPRA framework
Merit Review criteria and process

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27509 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: November 14, 1996 8:00 am–5:00 pm; November 15, 1996 8:00 am–12:00 pm.

Place: University of California at San Diego, 9500 Gilman Drive, Faculty Club, La Jolla, California 92093.

Type of Meeting: Open.

Contact Person: Adriaan de Graaf, Acting Executive Officer, MPS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1802.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda

November 14, 1996

AM
- Introductory Remarks
- Discussion on Future MPS Plans and Initiatives
- Panel Discussion on University/Industry Partnerships

PM
- Working Group Meetings

November 15, 1996

AM
- Reports from Working Groups
- Discussion/Summary of Issues

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27511 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: November 14–16, 1996; 8:30 A.M. until 4:00 P.M.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Sidney Graham, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1876.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Algebra and Number Theory Program, as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27510 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time: November 12, 1996, 8:00 a.m. to 6:00 p.m., November 13, 1996, 8:00 a.m. to 8:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Senior Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Applications of Advanced Technologies Program and Research in Teaching and Learning Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Walker,

Committee Management Officer.

[FR Doc. 96–27508 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (1171).

Date and Time: November 18, 1996; 9:00 a.m.—5:00 p.m.; November 19, 1996; 8:30 a.m.—12:00 noon.

Place: Room 375, NSF, 4201 Wilson Blvd., Arlington, Va. 22230.

Type of Meeting: Open.

Contact Person: Ms. Alice Mason, Executive Secretary; Directorate for Social Behavioral, and Economic Sciences, NSF, Suite 905; 4201 Wilson Blvd., Arlington, Va. 22230. Telephone: (703) 306–1741.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to SBE programs and activities.

Agenda: Discussions on role and directives of the NSF Directorate for Social, Behavioral and Economic Sciences.

Dated: October 21, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–27514 Filed 10–25–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Florida: Aviation Accident

In connection with its investigation of the accident involving ValuJet Airlines, Inc., Flight 592, DC–9–32, N904VJ, near Miami, Florida, May 11, 1996, the National Transportation Safety Board will convene a public hearing at 9:30 a.m., (est) on November 18, 1996, in the East Hall, Radisson Centre at the Radisson Mart Plaza Hotel, located at 777 N.W. 72nd Avenue, Miami, Florida 33126. For more information, contact Alan Pollock, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: October 22, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–27542 Filed 10–25–96; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–4492]

Wyoming Department of Environmental Quality

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance of Confirmatory Order to the Wyoming Department of Environmental Quality to complete reclamation of American Nuclear Corporation's Gas Hills, Wyoming, site.

SUMMARY: Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards has issued a Confirmatory Order to the State of Wyoming, Department of Environmental Quality, requiring completion of the reclamation of the American Nuclear Corporation's Gas Hills, Wyoming, uranium mill and tailings site.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Hooks, Uranium Recovery Branch, Mail Stop T–7J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7777.

SUPPLEMENTARY INFORMATION: The Wyoming Department of Environmental Quality (WDEQ) has undertaken to complete the reclamation of the American Nuclear Corporation's (ANC's) Gas Hills, Wyoming, site which is presently licensed under NRC Source Materials License No. SUA–667, originally issued to Federal American Partners in 1971 pursuant to 10 CFR Part 40. The site is located in the Gas Hills mining district in central Wyoming about 85 miles west of Casper. The licensed site encompasses approximately 550 acres of land, of which approximately 140 acres consist of the decommissioned mill site and two tailings ponds that are undergoing reclamation. The remainder of the site is semi-arid land that has minimal value for livestock grazing. Reclamation of the mill site was commenced in 1988.

The current licensee and site owner is ANC, which announced on May 9, 1994,

that it was discontinuing operations and going out of business. WDEQ informed the NRC on July 21, 1994, that it was prepared to complete reclamation of the site and had initiated bond forfeiture. The Wyoming Environmental Quality Council forfeited ANC's reclamation bond to WDEQ by Order dated October 5, 1994. It is understood that the State of Wyoming, through WDEQ, is reclaiming the site with proceeds from the reclamation bond forfeiture on October 5, 1994, and that the state has been spending its funds thereafter on reclamation at the site. WDEQ has hired a consultant to design final reclamation plans for ANC's Gas Hills site.

Any person adversely affected by the Confirmatory Order, other than WDEQ, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064; and to the Land Quality Division Administrator, WDEQ, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, the requirements specified shall be final 20 days from the date of this Order without further order or proceedings.

The Confirmatory Order is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 21st day of October 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–27560 Filed 10–25–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–262]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility License No. R–109 Brigham Young University L–77 Research Reactor

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order terminating Facility License No. R–109 for the Brigham Young University (BYU or the licensee) L–77 Research Reactor located on the licensee's campus in Provo, Utah in accordance with the application dated June 28, 1990, as supplemented on July 2, 1991; March 9, 1992; April 15, 1994; and May 30, October 9, and December 7, 1995.

Environmental Assessment

Identification of Proposed Action

By application dated June 28, 1990, as supplemented on July 2, 1991, and March 9, 1992, the licensee requested authorization to dismantle the BYU L–77 Research Reactor, and dispose of its component parts in accordance with the proposed decommissioning plan. The July 2, 1991, submittal also requested authorization to terminate Facility License No. R–109. Following an ''Order Approving Decommissioning Plan and Authorizing Decommissioning,'' dated July 23, 1992 (57 FR 33979), the licensee completed the dismantlement and submitted a final survey report dated April 15, 1994, as supplemented on May 30, October 9, and December 7, 1995. Representatives of the Oak Ridge Institute for Science and Education (ORISE), under contract to NRC, conducted a survey of the facility on April 10 and 11, 1996. The survey is documented in an ORISE report, ''Radiological Survey for the Brigham Young University L–77 Research Reactor Provo, Utah,'' dated June 1996. NRC Region IV staff, in a memorandum dated July 15, 1996, found that the ORISE report findings support the data developed in the licensee final survey report.

The Need for the Proposed Action

In order to release the facility for unrestricted access and use, Facility License No. R–109 must be terminated.

Environmental Impact of License Termination

The licensee indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of less than 5 micro-R/hr above background at 1 meter. The NRC verified these measurements. The NRC finds that, since these criteria have been met, there is no significant impact on the environment, and the facility can be released for unrestricted use.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would deny release of the site for unrestricted use and require continuance of the facility license. The environmental impacts of the proposed action and the alternative action are similar. Since the contaminated and activated reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative with less of an environmental impact than the termination of Facility License No. R–109.

Agencies and Persons Consulted

Personnel from the Oak Ridge Institute of Science and Education (an NRC contractor) conducted the confirmatory survey for the BYU L–77 Research Reactor. The staff consulted with the Utah State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The NRC has determined not to prepare an Environmental Impact Statement for the proposed action. On the basis of the foregoing Environmental Assessment, the NRC has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility License No. R–109, dated June 28, 1990, as supplemented. These documents are available for public inspection at the Commission's Public Document Room,

2120 L Street, N.W., Washington, D.C. 20037.

Dated at Rockville, Maryland this 21st day of October 1996.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–27561 Filed 10–25–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant (BSEP), Units 1 & 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment addresses potential environmental issues related to Carolina Power & Light Company's (CP&L) application to amend the BSEP, Units 1 and 2, Operating Licenses. The proposed amendments would increase the licensed core thermal power from 2436 megawatts thermal (MWt) to 2558 MWt, which represents an increase of 5 percent over the current licensed power level. This request is in accordance with the generic boiling water reactor (BWR) power uprate program (Reference 1) established by the General Electric Company (GE) and approved by the NRC staff in a letter dated September 30, 1991 (Reference 2).

The proposed action involves NRC issuance of license amendments to uprate the authorized power level by changing the Operating Licenses, including Appendix A (Technical Specifications). The proposed action is in accordance with the licensee's application for amendment dated April 2, 1996 (Reference 3), as supplemented by an earlier submittal dated November 20, 1995 (Reference 4), and by subsequent submittals dated July 1, 1996 (Reference 5), July 30, 1996 (Reference 6), August 7, 1996 (Reference 7), September 13, 1996 (Reference 8), September 20, 1996 (Reference 9), October 1, 1996 (Reference 10), October 22, 1996 (BSEP 96–0392) (Reference 11), and October 22, 1996 (BSEP 96–0403) (Reference 12).

The Need for the Proposed Action

The proposed action is needed to authorize CP&L to increase the potential electrical output of the BSEP by approximately 40.5 megawatts per unit, thus providing additional electrical power to service CP&L's grid.

Environmental Impacts of the Proposed Action

The ''Final Environmental Statement'' (FES) related to operation of BSEP, Units 1 and 2 (Reference 13) assumed a maximum reactor power level of 2550 MWt per unit in calculating releases of radioactivity in effluents. The licensee submitted a nonradiological environmental assessment (Enclosure 3 to Ref. 4) supporting the proposed power uprate action and provided a summary of its conclusions concerning the radiological and nonradiological environmental impacts (Enclosure 3 to Ref. 3) of the proposed action. As described in a July 1, 1996, response to NRC staff questions (Enclosure 1 to Ref. 5), evaluations performed by the licensee show no changes to the conclusions of the FES (Ref. 13) as a result of power uprate.

A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendments is provided below.

Nonradiological Environmental Assessment

As presented in the following evaluation, the proposed power uprate will not change the method of generating electricity nor the method of handling any influents from the environment or nonradiological effluents to the environment. Therefore, no new or different types of nonradiological environmental impacts are expected. The evaluation is based upon information provided by the licensee in a September 1995 GE licensing topical report supporting the BSEP power uprate (Reference 14) and in Enclosure 3 of Reference 4.

The BSEP uses a once-through circulating water system for dissipating heat from the main turbine condensers. This cooling system withdraws water from the Cape Fear River through a 3-mile long intake canal. The heated water is discharged to the Atlantic Ocean after it travels through a 6-mile long canal. A pumping station at the end of the canal pumps the water 2000 feet off of the beach through pipes. The National Pollutant Discharge Elimination System (NPDES) permit, issued on October 1, 1996, by the State of North Carolina Department of Natural Resources and Community Development, specifies requirements applicable to nonradiological effluents released from the BSEP. No changes or other action relative to the NPDES Permit are required to implement power uprate at the Brunswick Plant.

The NPDES permit currently allows the withdrawal, from the Cape Fear River, of 922 cubic feet of water per second (cfs), per unit, from December through March; 1105 cfs, per unit, from April through November; and 1230 cfs through one unit only from July through September. No changes to the flow rate of intake circulating cooling water will occur as a result of the proposed uprated power levels, therefore there will be no associated increase in the entrainment of planktonic organisms or impingement of fish, crabs, or shrimp. Chlorine is injected into the circulating water system to retard the growth of biofouling organisms. The NPDES permit limits the rate of chlorine injection. The chlorine injection rate is determined by the flow rate through the circulating water system. As stated above, the circulating water system flow rate will not change as a result of operation at uprated power levels; therefore, the chlorine injection rate will not change. As a result of the uprated power, the licensee has conservatively calculated an increase in the temperature of the circulating water leaving the main condensers of 1.4°F in the winter and 1.2°F in the summer (Table 6–3, Enclosure 2 to Ref. 4). These small increases at the condenser should not significantly impact the temperature of water discharged to the ocean, after traveling more than 6 miles through the discharge canal. As an example, on August 1, 1994, the ambient ocean water temperature was 83°F. With both units operating at 100% power, the water temperature at the point of ocean discharge was 91°F. At 1500 feet north and south from the point of discharge, approximately a 50-acre area, the water temperature was 83°F, i.e., ambient temperature. The NPDES permit allows a temperature increase up to 89.5°F within an area of 1,000 acres during the summer. Therefore, the ocean discharge mixing zone temperature limits, defined by the NPDES permit, should not be exceeded by operation at the uprated power.

Nonradiological effluent discharges from other systems were also reviewed by the licensee for potential effects from the proposed power uprate. Effluent limits for systems such as roof drains, yard drains, low volume waste, metal

cleaning waste, and the sewage treatment plant are established in the NPDES permit. Discharges from these systems are not changed by operation at uprated power; therefore, the impact on the environment from these systems is not changed. The licensee concluded (Enclosure 3 to Ref. 3) that the nonradiological parameters affected by power uprate will remain within the bounding conditions cited in the NPDES permit, and therefore no significant nonradiological environmental impact will result from the operation of BSEP under uprated power conditions.

Radiological Environmental Assessment

As presented below, the licensee evaluated the radiological effects of the proposed power uprate operation during both normal and postulated accident conditions. The licensee considered the effect of the higher power level on liquid radioactive wastes (Section 8.1 of Ref. 14), gaseous radioactive wastes (Section 8.2 of Ref. 14), and radiation levels both in the plant and offsite during both normal (Sections 8.3, 8.4, 8.5) and accident conditions. Section 9.2 of Reference 14 presents the results of the calculated whole body and thyroid doses at the exclusion area boundary and the low population zone that might result from the postulated design basis radiological accidents.

Gaseous radioactive effluents are produced during both normal operation and abnormal operational occurrences. These effluents are collected, controlled, processed, stored, and disposed of by the gaseous radioactive waste management systems which include the various building ventilation systems, the off gas system, and the standby gas treatment system (SGTS). The concentration of radioactive gaseous effluents released through the building ventilation systems during normal operation is not expected to increase significantly due to the proposed power uprate since the amount of fission products released into the reactor coolant (and subsequently into the building atmosphere) depends on the number and nature of fuel rod defects and is approximately linear with respect to core thermal power. The concentration of activation products contained in the reactor steam remains nearly constant, since the linear increase in the production of these activation products is balanced by the linear increase in steaming rate. Power uprate does not change the design basis noble gas release rates from the fuel. Therefore, based on its review of the various building ventilation systems, the licensee concluded that there will not be a significant adverse effect on airborne radioactive effluents as a result of the proposed power uprate.

The SGTS is designed to minimize offsite and control room radiation dose rates during venting and purging of both the primary and secondary containment atmospheres under accident or abnormal conditions. This is accomplished by maintaining the secondary containment at a slightly negative pressure with respect to the outside atmosphere and discharging the secondary containment atmosphere through high-efficiency particulate air (HEPA) filters and charcoal absorbers. The capacity of the SGTS was selected to provide one secondary containment air volume change per day and thereby maintain the reactor building at a slight negative pressure. This capability is not impacted by power uprate. Although the total post-loss of coolant accident (LOCA) iodine loading of the charcoal filter beds increases slightly at uprated conditions, the total loading remains well below the original design capability of the filters.

Radiolysis of the reactor coolant causes the formation of hydrogen and oxygen, the quantities of which are expected to increase linearly with core power. These additional quantities of hydrogen and oxygen would increase the flow to the recombiners by 5 percent during uprated power conditions. However, the operational increases in hydrogen and oxygen remain within the design capacity of the offgas system.

The design basis data for the concentration of activated corrosion products in the reactor water were assessed, and the licensee concluded that the design basis data contain sufficient conservatism and do not need to be increased for power operation. The licensee concluded that the fission product activity level in the reactor coolant will not exceed design basis data.

The largest source of liquid radioactive waste is from the backwash of the condensate demineralizers. These demineralizers remove activated corrosion products which are expected to increase proportionally with the proposed power uprate. However, the total volume of processed waste is not expected to increase significantly, since the only appreciable increase in processed waste will be due to the more frequent cleaning of these demineralizers. The floor drain collector subsystem and the waste collector subsystem both receive inputs from a variety of sources. Leakages from these systems are not expected to increase significantly due to the proposed power uprate. Based on a review of previous plant effluent reports and the slight increase in liquid radioactive waste expected due to the proposed power uprate, the licensee concluded that the slight increase in the processing of liquid radioactive wastes will not cause a significant increase in environmental impact and that requirements of 10 CFR Part 20 and 10 CFR Part 50, Appendix I, will continue to be met.

The uprated conditions may result in spent fuel with a higher burnup (and radiation levels) relative to the current levels. As indicated in Section 2.1 of Reference 14, any increase in burnup will be within the NRC currently approved limit for BSEP fuel designs. The NRC extended the fuel burnup limit for the BSEP units to 60 gigawatt days per metric ton (GWD/MT) as part of license amendment no. 124 for Unit 1 and 153 for Unit 2 issued on February 6, 1989, and September 20, 1988, respectively. The environmental assessments associated with each of these amendments, which were published in the Federal Register for Unit 1 on January 31, 1989 (54 FR 4924), and Unit 2 on September 6, 1988 (53 FR 34357), considered the environmental impacts of transportation resulting from the 60 GWD/MT burnup limit with fuel enrichment up to 5%. The BSEP fuel enrichment does not exceed 5%. Both environmental assessments concluded that there were no significant radiological or nonradiological impacts associated with the amendments. Since the burnup levels for power uprate are bounded by the levels previously evaluated as acceptable and BSEP fuel enrichment does not exceed 5%, the Commission continues to conclude that there are no significant radiological or nonradiological impacts associated with this aspect of the licensee's power uprate proposal.

The licensee evaluated the effects of the power uprate on in-plant radiation levels for the Brunswick Plant during both normal operation and under post-accident conditions. The licensee's conclusions are that radiation levels during both normal operation, post-operation (plant outages), and under post-accident conditions may increase slightly (approximately proportional to the increase in power level). The increase expected in in-plant and post-operation radiation levels due to the proposed power uprate should not affect radiation zoning or shielding in the various areas of the plant, since it is offset by conservatism in the original design, source terms used, and analytical techniques. Individual worker occupational exposures will be maintained within acceptable limits by the existing Health Physics program, which controls access to radiation areas.

The increase in radiation levels due to the proposed power uprate under post-accident conditions has no significant effect on the plant, or on the habitability of the Technical Support Center or Emergency Operations Facility.

The licensee re-evaluated the effect of the power uprate on Design Basis Accident (DBA) radiological consequences and reported these results (Section 9.2 of Reference 14). The original licensing DBA source terms for Brunswick were considered. The licensee also re-evaluated the control room habitability under DBA conditions. The licensee stated that the radiological consequence analyses were performed using standard models developed by GE that have been utilized in other power uprate projects. The dose analyses were based on plant-specific parameters from the BSEP Updated Final Safety Analysis Report and were calculated at both the current power and at 102% of the proposed uprate power. The licensee's analyses indicate that the calculated offsite radiological consequences doses for all DBAs are within the dose acceptance criteria stated in the NRC's Standard Review Plan (SRP) and 10 CFR Part 100 and also comply with the dose acceptance criteria for control room operators given in General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50. The staff performed confirmatory evaluations of radiological consequences of DBAs for the proposed power uprate. The staff found that the offsite radiological consequences and control room operator doses for all DBAs at the uprated power level of 2558 MWt will continue to meet the acceptance criteria of the SRP, 10 CFR Part 100, and GDC 19.

The NRC staff finds the licensee's assessment of the radiological effects of the proposed action acceptable and concludes that the proposed uprate will not significantly increase radiological impacts on the environment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant (within existing limits) environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in current environmental impacts of plant operation, but would restrict operation of BSEP to the currently licensed power level. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the BSEP.

Agencies and Persons Consulted

In accordance with its stated policy, on October 17, 1996, the staff consulted with the North Carolina State official, Mr. J. James, of the North Carolina Department of Environment, Commerce and Natural Resources, Division of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action. For further details with respect to the proposed action, see the licensee's application dated April 2, 1996, as supplemented by an earlier submittal dated November 20, 1995, and by subsequent submittals dated July 1, 1996, July 30, 1996, August 7, 1996, September 13, 1996, September 20, 1996, October 1, 1996, October 22, 1996 (BSEP 96–0392), and October 22, 1996 (BSEP 96–0403), which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 College Road, Wilmington, North Carolina 28403–3297.

References

1. GE Nuclear Energy, ''Generic Guidelines For General Electric Boiling Water Reactor Power Uprate,'' Licensing Topical Report NEDO–31897, Class I (non-proprietary), February 1992; and NEDC–31897P-A, Class III (Proprietary), May 1992.
2. W. T. Russell, U.S. Nuclear Regulatory Commission, letter to P.W. Marriott, General Electric Company, ''Staff Position Concerning General Electric Boiling Water Reactor Power Uprate Program,'' September 30, 1991.
3. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, ''105% Thermal Power Uprate,'' April 2, 1996.
4. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, ''Power Uprate,'' November 20, 1995.
5. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, July 1, 1996.
6. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, July 30, 1996.
7. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, August 7, 1996.
8. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, September 13, 1996.
9. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, September 20, 1996.
10. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, October 1, 1996.
11. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, October 22, 1996 (BSEP 96–0392).
12. W. R. Campbell, Carolina Power & Light Company, letter to U.S. Nuclear Regulatory Commission, October 22, 1996 (BSEP 96–0403).
13. ''Final Environmental Statement,'' Brunswick Steam Electric Plant dated January 1974.
14. GE Nuclear Energy, ''Power Uprate Safety Analysis Report for Brunswick Steam Electric Plant, Units 1 & 2,'' Licensing Topical Report NEDC–32466P, Class III (Proprietary), September 1995 (Enclosure 1 to Ref. 4); NEDO–32466, Class I (Non-proprietary) September 1995 (Enclosure 2 to Ref. 4).

Dated at Rockville, Maryland, this 23rd day of October, 1996.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–27558 Filed 10–25–96; 8:45 am]

BILLING CODE 7590–01–P

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is a proposed Revision 3 to Regulatory Guide 1.105, and it is temporarily identified as DG–1045, ''Setpoints for Safety-Related Instrumentation.'' The guide will be in Division 1, ''Power Reactors.'' This regulatory guide is being revised to

provide current guidance on methods acceptable to the NRC staff for complying with the NRC's regulations for ensuring that setpoints for safety-related instrumentation are initially within and remain within the licensee's technical specification limits. The guide will endorse Part 1 of an Instrument Society of America standard, ISA-S67.04–1994, ''Setpoints for Nuclear Safety-Related Instrumentation.''

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by December 31, 1996.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415–5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S.K. Aggarwal at the NRC, telephone (301) 415–6005; e-mail SKA@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Distribution and Mail Services Section; or by fax at (301) 415–2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 7th day of October 1996.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 96–27559 Filed 10–25–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Specifications for Information Based Indicia Program ''Host Systems''

AGENCY: Postal Service.

ACTION: Notice of proposed IBIP Host System specification with request for comments and announcement of IBIP Technology Symposium.

SUMMARY: Historically, postage meters have been mechanical and electromechanical devices that (1) maintain through mechanical or electronic ''registers'' (postal security devices) an account of all postage printed and the remaining balance of prepaid postage, and (2) print postage indicia that are accepted by the Postal Service as evidence of the prepayment of postage. Two proposed specifications have been published on these subjects, and are entitled ''Information Based Indicia Program (IBIP) Postal Security Device (PSD) Specification [Draft]'' and ''Information Based Indicia Program (IBIP) Indicium Specification [Draft].'' (See Federal Register notices Vol. 61, No. 128, Tuesday, July 2, 1996, and Vol. 61, No. 136, Monday, July 15, 1996.) The proposed IBIP Host System specification is another specification document intended to provide technical information relevant to the development and production of IBI products. The U.S. Postal Service is seeking comments on this specification.

The Postal Service also seeks comments on intellectual property issues raised by the IBIP Host System specification if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the specification, the comments should include a listing of such patents and applications and the license terms available for such patents and applications.

Also, the Postal Service will be hosting a technology symposium at the Booz-Allen & Hamilton conference

Center, 8283 Greensboro Drive, McLean, VA on November 25–26, 1996. The purpose of the technology symposium will be to expand the Postal Service's perspective of IBIP by including presentations from the public. Focus areas for the symposium include: indicium symbology, indicium printing, indicium scanning, and cryptography. Vendors are invited to host ''demonstration/consultation areas'' during the symposium.

DATES: Comments on the IBIP Host System specification will be accepted until January 27, 1997. Comments addressing intellectual property issues must be received on or before Dec. 24, 1996.

Reservations to attend the IBIP technology symposium may be made by calling Terry Goss at (202) 268–3757 or Gloria Valcin at (202) 268–5586. Reservations for attendance may be made until November 21; however, we encourage early registration as seating is limited. Reservations for ''demonstration/consultation areas'' at the symposium may be made by calling Katrina Snow at (703) 902–5325. Reservations for vendor space for ''demonstration/consultation areas'' may be made until November 15, based on space availability.

ADDRESSES: Copies of the IBIP Host System Specification may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW., Room 8430, Washington, DC 20260–6807. Mail or deliver written comments on the IBIP Host System specification to: Manager, Retail Systems and Equipment, United States Postal Service, 475 L'Enfant Plaza SW., Room 8430, Washington, DC 20260–6807.

FOR FURTHER INFORMATION CONTACT: Terry Goss: (202) 268–3757.

SUPPLEMENTARY INFORMATION: There are approximately 1.5 million postage meters in use in the United States which collectively account for approximately $20 billion in postal revenue annually. The manufacture and use of postage meters is governed by Postal Service regulations (see 39 CFR Part 501; Domestic Mail Manual P030). For several years USPS has been actively proposing a solution of the problem of inadequate postage meter security. To respond to the threat of fraudulent use of meters by physical tampering, USPS intends to decertify and remove from the market, in risk-driven phases, all postage meters using mechanical registers. Another problem USPS has faced is that currently available meter indicia are susceptible to counterfeiting. The Postal Service is exploring using current technology special purpose units such as computers and independent printers to provide prepaid postage.

The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. USPS envisions that the new indicium standard may eventually support new or existing products and services. Specific products and services have not been determined. An ''IBIP Indicium'' substitutes for a postage stamp or a postage meter imprint as evidence of the fact that postage has been paid on mailpieces. An ''IBIP Postal Security Device'' provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions. An ''IBIP Host System'' provides the interface between functions performed by the IBIP Postal Security Device and the IBIP Indicium.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. The IBIP indicia is expected eventually to replace all metered postage imprints that rely on letter press printing technology. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

It is emphasized that this proposed standard is being published for comments and is subject to final definition.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. §§ 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. § 410 (a), the Postal Service invites public comments on the proposed specifications.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–27349 Filed 10–25–96; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042.

Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, and 295.

The RRB uses Form AA–3, Application for Spouse/Divorced Spouse Annuity, to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes to revise Form AA–3 to add items that secure information pertaining to the direct deposit of benefits and Medicare processing and delete items no longer required. Language required by the Paperwork Reduction Act of 1995, will be added as well as other minor cosmetic and editorial changes. The RRB estimates that 10,800 AA–3's are completed annually at an estimated completion time of 33 to 58 minutes per response. Total respondent burden is estimated at 5,982 hours.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–27518 Filed 10–25–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22294; 811–5462]

The Classic Trust; Notice of Application

October 22, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: The Classic Trust.

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 July 26, 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 18, 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, Gruntal & Co., Incorporated, 14 Wall Street, New York, NY 0005–2176.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, 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 a unit investment trust registered under the Act. On January 28, 1988, applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–8B–2 pursuant to section 8(b) of the Act. On the same date, applicant filed a registration statement on Form S–6 under the Securities Act of 1933 to register its shares.

2. Applicant's registration statement was never declared effective. No initial deposit of assets was ever made and no initial public offering ever commenced.

3. Applicant has no securityholders, debts, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding. 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 SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27609 Filed 10–25–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37851; File Nos. SR–MCC–96–04; SR–MSTC–96–04]

Self-Regulatory Organizations; Midwest Clearing Corporation; Midwest Securities Trust Company; Order Approving Proposed Rule Changes Relating to Nominations for Board Membership, the Risk Assessment Committees, Appeals Process, Audits and Financial Reports, and Temporary Sponsored Participants and Accounts

October 22, 1996.

I. Introduction

On June 26, 1996, the Midwest Clearing Corporation (''MCC'') and Midwest Securities Trust Company (''MSTC'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] proposed rule changes (SR–MCC–96–04 and SR–MSTC–96–04) to amend certain rules in response to MSTC's withdrawal from the securities dispository business and MCC's withdrawal from the securities clearance and settlement business.

The proposed rule changes were published for comment in the Federal Register on August 20, 1996, to solicit comments from interested persons.[2] No comments were received on the proposed rule changes. For the reasons discussed below, the Commission is approving the proposed rule changes.

[1] 15 U.S.c. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37555 (August 9, 1996), 61 FR 43105.

II. Description of the Proposals

On December 26, 1995, MSTC and MCC filed proposed rule changes relating to MSTC's withdrawal from the securities depository business and MCC's withdrawal from the securities clearance and settlement business.[3] Subsequent to the Commission's approval of the filings, MSTC commenced and orderly wind-down of its operations and a transition of all of its participants to other service provides, and MCC ceased operations for all of its participants except its Sponsored Participants.

In connection with the withdrawal from the clearance, settlement, and depository businesses, MSTC and MCC are amending their By-Laws to eliminate the requirement that they provide participants with information relating to the nomination and election of board members.[4] Additionally, MSTC and MCC are deleting the provisions in their rules relating to their respective Risk Assessment Committee.[5] Because of the elimination of the Risk Assessment Committees, MSTC and MCC are amending their respective rules to eliminate the requirement that MSTC and MCC consult with the Risk Assessment Committee before ceasing to act for a participant and to replace subsequent references to the Risk Assessment Committee with references to a panel of board members.

MSTC and MCC are amending their respective appeal processes to conform their appeal procedure to similar procedures currently used by the Chicago Stock Exchange (''CHX'') for emergency suspensions. Specifically, the amendments eliminate a second level of internal appeals and adjust some of the time periods set forth in the rules.[6]

MSTC and MCC are deleting their respective rules relating to audits and financial reports, such as the production of independent financial statements or internal accounting controls.[7]

[3] For a complete discussion of MCC's and MSTC's withdrawal from the clearing and depository businesses, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (File Nos. SR–CHX–95–27, SR–DTC–95–22, SR–MCC–95–4, SR–MSTC–95–10, and NSCC–95–15), (order approving MCC's and MSTC's withdrawal from the clearance and settlement and securities depository businesses).

[4] MSTC is amending Article III, Section 2 of its By-Laws, and MCC is amending Article 3, Section 3.2 of its By-Laws.

[5] MSTC is deleting Article I, Rule 4 and amending Article V, Rule 2. MCC is deleting Article I, Rule 4 and amending Article VIII. Rule 2.

[6] MSTC is amending Article VII, Rule 8, Section 3 and deleting Section 5, and MCC is amending Article X, Rule 8, Section 3 and deleting Section 5.

[7] MSTC is deleting Article VII, Rule 5, and MCC is deleting Article X, Rule 5.

Additionally, MSTC and MCC are deleting their respective rules relating to Temporary Sponsored Participants and Accounts.[8]

MSTC and MCC believe that the rule changes are consistent with Section 17A [9] of the Act because the amendments will facilitate the prompt and accurate clearance and settlement of securities transactions and are designed to assure the safeguarding of securities and funds which are in their control or for which they are responsible.

III. Discussion

Section 17A(b)(3)(F) of the Act [10] requires that the rules of a clearing agency be designed to remove impediments to and perfect the national system for the clearance and settlement of securities transactions. The Commission believes that MSTC's and MCC's By-law amendments in response to MSTC's withdrawal from the securities depository business and MCC's withdrawal from the securities clearance and settlement business are consistent with their obligations under Section 17A(b)(3)(F) of the Act. Specifically, eliminating rules relating to nominations for board membership, the Risk Assessment Committee, the appeals process, audits and financial reports, and Temporary Sponsored Participants and Accounts, will eliminate duplicative and obsolete rules without any substantive effect.

The Commission believes that MSTC's and MCC's amendments to their By-Laws to eliminate the requirement that participants receive information relating to the nomination and election of board members should remove rules that are currently obsolete in light of MSTC's and MCC's withdrawal from the securities depository business and securities clearance and settlement businesses. Specifically, because MSTC no longer has any active participants, it is no longer appropriate to require MSTC to provide participants with information relating to the nomination and election of board members. Additionally, membership in the CHX is a prerequisite to being accepted by MCC as a Sponsored Participant. Therefore, all of MCC's Sponsored Participants are CHX members, and as CHX members, MCC's Sponsored Participants receive information relating to the nomination and election of the CHX board of governors pursuant to CHX rules.

The Commission believes that it is appropriate for MSTC and MCC to delete the provisions in their rules relating to their respective Risk Assessment Committees. Specifically, in light of MSTC's withdrawal from the securities depository business and MCC's withdrawal from the securities clearance and settlement business, it is no longer necessary to maintain a Risk Assessment Committee that serves as an appellate review board and independent consultant to management.

Because MSTC has no members and because all MCC participants are also required to be CHX floor members, the Commission believes that it is appropriate for MSTC and MCC to amend their respective ceasing to act appeal processes to conform to similar procedures currently used by the CHX for emergency suspensions. Additionally, all MCC participants would still be subject to the CHX's rules regarding emergency suspensions.

The Commission believes that eliminating MSTC's and MCC's respective rules relating to audits and financial reports, and Temporary Sponsored Participants and Accounts is consistent with the Act because, in light of MSTC's and MCC's withdrawal from the securities depository business and securities clearance and settlement business, it is no longer necessary to produce independent financial statements or maintain internal accounting controls. For example, currently, there are no internal operations at MSTC, and MCC no longer maintains independent positions of securities. MCC merely acts as a conduit for Sponsored Participants to enable them to hold their positions at the National Securities Clearing Corporation. As a result, it is no longer necessary to produce independent financial statements or maintain internal accounting controls. Additionally, MSTC's and MCC's financial statements would still be reflected as part of the consolidated annual audited financials of their parent, the CHX.

IV. Conclusion

On the basis of the foregoing, the Commission finds that MSTC's and MCC's proposed rule changes are consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MSTC–96–04 and SR–MCC–96–04) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–27610 Filed 10–25–96; 8:45 am]

BILLING CODE 8010–01–M

[8] MSTC is Article VIII, Rules 1 through 5, and MCC is amending Article XI, Rules 1, 2(a), 2(b), 2(c), 3(a), 3(b), 3(c), 5(d), 7(a) through 7(e), 7(g), 7(i), 10(a), 11(a), 11(d)(3) through 11(d)(6), and 11(e) through 11(i) and deleting Rules 5(c), 7(f), and 7(h).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37846; File No. SR–Philadep–96–13]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Granting Permanent Approval of Proposed Rule Change Concerning Procedures Relating to Rule 17Ad–16

October 21, 1996.

On July 2, 1996, Philadelphia Depository Trust Company (''Philadep'') filed a proposed rule change (File No. SR–Philadep–96–13) with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on August 20, 1996, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

On July 20, 1995, the Commission approved on a temporary basis a proposed rule change filed by Philadep to modify its procedures to implement Exchange Act Rule 17Ad–16.[3] Rule 17Ad–16 [4] is designed to address the current and continuing problem of transfer delays due to unannounced transfer agent changes, including the change of a transfer agent for a particular issue and the change of the name or address of a transfer agent. The rule requires a registered transfer agent to send a notice to the ''appropriate qualified registered securities depository'' [5] when assuming or

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 37558 (August 12, 1996), 61 FR 43110.

[3] Securities Exchange Act Release No. 36002 (July 20, 1995), 60 FR 38602.

[4] 17 CFR 240.17Ad–16. Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656 (order adopting Rule 17Ad–16).

[5] An ''appropriate qualified register securities depository'' is defined by Rule 17Ad–16 to mean the qualified registered securities depository that the Commission so designates by order, or in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. A ''qualified registered securities depository'' is defined by Rule 17Ad–16 to mean a clearing agency

Continued

terminating transfer agent services on behalf of an issuer or when changing its name or address.

Philadep has established the following as procedures for complying with Rule 17Ad–16. The Depository Trust Company (''DTC''), as the appropriate qualified registered securities depository, will inform Philadep of all transfer agent changes within twenty-four hours regardless of whether the issue is eligible at Philadep.[6] For issues that are eligible at Philadep, Philadep will update its security masterfile to reflect the changes in transfer agents for affected issues. Philadep participants may access this information through Philanet.[7] In order to comply with Rule 17Ad–16 for issues that are DTC eligible but are not Philadep eligible, Philadep will make transfer agent information available to its participants in the form of a Philanet broadcast message. The Philanet broadcast messages will print at the participants' offices. Furthermore, if participants want to call Philadep for transfer agent information for securities that are not Philadep eligible, they may contact Philadep Operations.

Philadep will keep the broadcast messages and its transfer agent changes notification manifest at its office in accordance with the record retention requirement contemplated in Rule 17Ad–16. Whether eligible or not eligible at Philadep, Philadep has stated that it will serve to inform its participants of the status of the current transfer agent. Philadep anticipates that few, if any, Philadep only participants will deal directly with transfer agents. Assuming that any such participants do deal directly with transfer agents, Philadep further anticipates that these participants will conduct de minimus activity in issues that are not Philadep-eligible. Moreover, all Philadep participants may request that Philadep review a security not eligible at Philadep with respect to making the issue eligible at Philadep on the same day of the request.

registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives.

[6] Securities Exchange Act Release No. 35378, 60 FR 9875 (February 15, 1995).

[7] Philanet is Philadep's on-line terminal network system. Philanet allows participants to access information affecting their accounts through an on-site terminal located at the participants' offices.

In order to specifically access the transfer agent information, participants must access ''RQST,'' must enter the account and CUSIP number, and then must access the ''SPOL'' screen. This screen will reveal the current transfer agent and its address.

II. Discussion

The Commission believes Philadep's proposed rule change is consistent with Section 17A of the Act,[8] and the rules and regulations thereunder applicable to registered securities depositories. The proposed rule change will allow Philadep to comply with Commission Rule 17Ad–16 which requires registered securities depository to provide their participants with notices received from a transfer agent, directly or through the appropriate qualified registered securities depository, when the transfer agent is terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address.

III. Conclusion

For the reasons stated above, the Commission finds that Philadep's proposal is consistent with Section 17A of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–Philadep–96–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 96–27527 Filed 10–25–96; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s (1988).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30(a)(12) (1996).

DEPARTMENT OF STATE

[Public Notice No. 2438]

Shipping Coordinating Committee Council and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:00 AM on Wednesday, November 13, 1996, in Room 6303, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 77th session of the Council and the 43rd Session of the Technical Cooperation Committee of the International Maritime Organization (IMO), which is scheduled for November 18–22, 1996, at IMO Headquarters in London. At the meeting, discussions will focus on papers received and draft U.S. positions. Among other things, the items of particular interest are:

a. Reports of the IMO committees
b. Review of the IMO technical cooperation activities
c. Relations with the United Nations
d. Reports for World Maritime University and International Maritime Law Institute
e. Work program and budget for 1996–1997
f. Administrative and financial matters

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G-CI), 2100 Second Street, SW, Room 2114, Washington, DC 20593–0001, by calling: (202) 267–2280, or by faxing: (202) 267–4588.

Dated: October 22, 1996.

Russell A. Lamantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–27544 Filed 10–25–96; 8:45 am]

BILLING CODE 4710–07–M

COMMISSION ON UNITED STATES—PACIFIC TRADE AND INVESTMENT POLICY/OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meetings of the Commission on United States Pacific Trade and Investment Policy

AGENCY: Commission on United States—Pacific Trade and Investment Policy/Office of the United States Trade Representative.

ACTION: Notice that the next two meetings of the Commission on United States—Pacific Trade and Investment Policy are scheduled for October 30, 1996 and November 8, 1996 from 9:30 a.m. to 5:30 p.m. These meetings will be closed to the public.

SUMMARY: The Commission on United States—Pacific Trade and Investment Policy will hold two meetings one on October 30, 1996 and one on November 8, 1996 from 9:30 a.m. to 5:30 p.m. These meetings will be closed to the public. These meetings will include a review and discussion of current issues affecting U.S. trade policy with Asia and discussion of the Commission's final recommendations for its report to the President. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection

with the development, implementation and administration of the trade policy of the United States.

DATES: These meetings are scheduled for October 30, 1996, and November 8, 1996, unless otherwise notified.

ADDRESSES: These meetings will be held at the U.S. Department of Commerce, Patent and Trademark Office, Office of Patent Policy Dissemination, Crystal Square 4, Suite 700, 1745 Jefferson Davis Highway (Route 1) Arlington, VA 22202, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Nancy Adams, Executive Director of the Commission on United States—Pacific Trade and Investment Policy, Room 400, 600 17th Street, NW., Washington, D.C. 20508, (202) 395–9679.

Nancy Adams,

Executive Director, Commission on United States—Pacific Trade and Investment Policy.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–27552 Filed 10–25–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1996 [FR 61 16968].

DATES: Comments must be submitted on or before November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366–5763, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Drivers Qualification Files (Regularly Employed Drivers and Intermittent, Casual, or Occasional Drivers).

Type of Request: Reinstatement, without change, of previous changes to a currently approved information collection.

OMB Control Number: 2125–0065.

Form Number: None.

Affected Public: Motor Carriers.

Abstract: Motor Carriers are required to maintain a drivers qualification file for each commercial motor vehicle (CMV) driver to document that the driver meets the qualifications standards to drive a CMV in interstate commerce.

Need: To ensure the motor carrier to maintain a driver's qualification file for each regularly employed driver and each intermittent, casual, and occasional driver.

Estimated Annual Burden: The total annual burden is 860,749 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 21, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–27584 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[AC120–40C]

Proposed Revision C to Advisory Circular (AC) on Airplane Simulator Qualification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of the Proposed Revision C to AC 120–40B and final request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed revision C to AC 120–40B, Airplane Simulator Qualification, which provides guidance on acceptable methods, techniques, and practices associated with qualification of airplane simulator. The guidance material contained in this AC reflects information to assist all operators in the qualification of airplane simulators to be used in training programs or for airman checking under title 14 Code of Federal Regulations. The revision provides updated information regarding simulator evaluation criteria and procedures. The revision, in addition to updating criteria and procedures, incorporates the provisions of the International Civil Aviation Organization (ICAO) publication, Manual of Criteria for the Qualification of Flight Simulators, Doc 9625–AN/938. Any comments, corrections or suggestions should reflect the applicable AC chapter, page and paragraph number. If new data or practices are suggested, a copy of this data or methods should be enclosed with the comments.

DATE: Comments must be received on or before December 15, 1996.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, National Simulator Program (Attention: AFS–205), P.O. Box 20636, Atlanta, Georgia 30320. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul A. Ray, AFS–205, at the above address; or telephone (404) 305–6100; or facsimile (404) 305–6118.

SUPPLEMENTARY INFORMATION: Requests for copies of the proposed AC can be obtained by contacting AFS–205 at (404) 305–6100 or by written request: Federal Aviation Administration, National Simulator Program (Attention: AFS–205), P.O. Box 20636, Atlanta, Georgia, 30320.

Issued in Washington, DC., on October 18, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 96–27619 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on November 13, 1996, at 10 a.m. Arrange for oral presentation by November 4, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on November 13, 1996, at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 10 a.m. The agenda will include:

- Status of ARAC under the Air Traffic Management System Performance Improvement Act of 1996 (reauthorization)
- Proposed recommendation by the Digital Information Working Group on a Use of Digital Systems for Direct Access and Interchange of Technical Data advisory circular (AC) (tentative)
- Update on a proposed task concerning overflights of national parks
- Feedback from visits to FAA Certification Directorates

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by November 4, 1996, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting.

A copy of the proposed AC that will be the subject of the Digital Information Working Group's briefing may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 22, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–27618 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–03–M

Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice announces a public meeting which is being held by the Federal Aviation Administration (FAA) for the purpose of soliciting and reviewing information from the public on the criteria used in showing compliance with § 25.671(c)(3) of the Federal Aviation Regulations (FAR) relative to jammed flight control systems. Interested parties are invited to make presentations or submit material for the record.

DATES: The public meeting is scheduled for Tuesday, December 3, 1996. On-site registration will begin at 7:30 a.m., and the public meeting will begin at 8:30 a.m.

REGISTRATION: Persons planning to attend the public meeting should pre-register by contacting the person identified later in this notice as the contact for further information. Arrangements for oral presentations must be made by November 1, 1996.

ADDRESSES: The public meeting will be held at the Holiday Inn Sea-Tac International Airport, 17338 International Blvd., Seattle, WA 98188. Telephone: 206–248–1000, Fax: 206–242–7089. Hotel room reservations should be made in advance. A block of rooms has been reserved at the Holiday Inn Sea-Tac International Airport. The room rate is $74 plus tax. Persons wishing to attend the public meeting are encouraged to make reservations by November 15, 1996, by contacting the hotel direct at 206–248–1000. Be sure to identify yourself as an attendee of the ''FAA public meeting on jammed flight controls'' to receive the special rate.

FOR FURTHER INFORMATION CONTACT: Iven Connally, FAA, Transport Standards Staff, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2120.

SUPPLEMENTARY INFORMATION: Notice is herewith given of a public meeting to be held on Tuesday, December 3, 1996, at the Holiday Inn Sea-Tac International Airport. The purpose of this meeting is to hear comments from the general public regarding criteria to be used in showing compliance with the requirements of § 25.671(c)(3) relative to the flight control jams in the ''normally encountered'' position. The FAA is inviting the interested public to participate in developing standardized methods to be used in showing compliance with this requirement. The FAA will consider information presented at the public meeting in the course of developing future advisory material on this subject. In addition, the public is invited to discuss the National Transportation Safety Board (NTSB) Recommendation A–96–108. It recommends that 14 CFR 25.671 be revised to account for failure or jamming of any flight control surface at its design-limited deflection. The FAA will consider any public comments on this recommendation in developing a response to the NTSB.

The agenda for the meeting will include:

Regulatory Background
Certification Procedures
Presentations from the Public

In order to expedite the resolution of this issue, the FAA has developed an initial certification policy on this subject, which is presented in this notice. The public is invited to comment on any aspect of the draft policy. In addition to the general discussion on jams in the flight controls, the FAA is soliciting data on control surface deflection exceedances per flight hour based on normal revenue flights. For convenience, this data should be presented in the form of a plot of control surface deflection in degrees vs. number of exceedances per flight hour. These data are needed to determine the surface deflections normally encountered during all phases of flight.

The FAA Proposed Policy

In the absence of more rational data, the criteria listed below should be used to define the jammed control surface positions. The control surface deflections associated with the ''Conditions at the time of the Control Surface Jam'' must be based on the maximum deflections developed during initiation of and recovery from the maneuver. In order to account for the probability of occurrence of the jam, the maneuver and gust conditions at the time of the jam should be selected at the once in one hundred hours exceedance level. The exceedance data should be obtained from normal revenue flights.

Controllability must be evaluated in the jammed condition for all approved airplane gross weights and center of gravity (c.g.) locations. However, only critical combinations of gross weights and c.g. locations need to be demonstrated.

Alternate means of control, such as trim systems, may be used if it can be demonstrated that the systems are available and sufficiently responsive to allow the pilot to control the airplane. No credit will be given for differential engine thrust in maneuvering the airplane. For the purpose of establishing control positions normally encountered, only the airplane rigid body modes need to be considered when evaluating the airplane response to either maneuvers or gusts. The combined effects of pilot input and any automatic system response (with system both on and off) must be evaluated for these conditions. It is not necessary to consider additional failures (e.g., engine failure) when evaluating the jammed condition.

The controllability criteria typically applied in satisfying these requirements use the FAA Handling Qualities Rating Method (HQRM) (Reference Appendix 7 of the draft revision to AC 25–7, as announced in the Federal Register, 61 FR 14847, dated April 3, 1996) as an evaluation tool, and specify the minimum handling qualities rating necessary to show compliance with the regulation.

Conditions at Time of the Control Surface Jam

Jammed Elevator Positions

Takeoff run (elevator for airplane nose down appropriate for the airplane).

Takeoff rotation (at maximum elevator for airplane nose up rotation).

Normal maneuvers between 0.8 and 1.3gs anywhere between V_2/V_{ref} and V_{mo}.

Vertical discrete gusts up to 25 fps from S.L. to 20,000 feet.

Jammed Rudder Positions

Limit of the yaw damper control authority.

One third of the total available travel of the control surface.

Lateral discrete gusts up to 25 fps from S.L. to 20,000 feet.

Steady crosswinds up to 20 knots in the takeoff and landing configuration.

Jammed Aileron and Roll Control Spoiler Positions

One third of the total available travel of the control surface up to 250 knots. For speeds above 250 knots, the deflection associated with the roll rate established at 250 knots.

Vertical and lateral discrete gusts up to 25 fps from S.L. to 20,000 feet Servo tabs installed on control surfaces are assumed jammed in the position associated with the deflection of the control surface on which they are installed. For example, the aileron servo tax positions are those associated with the aileron positions at the time of the jam described herein. Servo tabs are tabs that are designed to assist in moving the control service.

Trim tabs and movable stabilizers are assumed jammed in the position normally selected for takeoff, landing, and normally used throughout the flight to maintain the airplane in the trimmed conditions for all gross weights and c.g. locations.

Speed brake panels are assumed to jam in any position for which they are approved to operate during flight that might result from any condition of failure in the system not shown to be extremely improbable.

Flaps and slats are assumed to jam in any position used for takeoff, approach, and landing, as well as in the fully retracted position, that might result from any failure condition in the system not shown to be extremely improbable. Section 25.701 addresses the asymmetrical jam conditions for which these devices must be designed.

Critical for Continued Safe Flight and Landing Following a Jam

The airplane must have sufficient maneuverability and residual structural strength for continued safe flight and landing after jams in the flight controls. Consideration may be given to any appropriate reconfiguration and flight limitations following the jam. The FAA handling qualities rating method will be used to evaluate airplane handling characteristics. Controllability following a jam must be demonstrated by flight test or a validated flight simulator. The following criteria must be used to evaluate the handling qualities following a control jam:

(1) The transient condition should be rated at least CONTROLLABLE (CON).

(2) For continued safe flight and landing with the jammed condition, the airplane should have sufficient remaining control authority, and the FAA Handling Qualities Rating should not be less than ADEQUATE (ADQ), including:

- Short and long term control forces must meet the criteria of § 25.143(c).
- The airplane must be maneuverable to the NFE boundaries for angle-of-attack, load factor, and bank angle.
- There must be sufficient remaining control authority to land in an adverse 10 knot crosswind.

Airplane flight manual procedures for jams may assume that crews share the flying duties, provided these procedures are clearly described and can be consistently executed in service by pilots of average skill (ref. § 25.101(h)). All jammed-control procedures should be covered in crew training, and in qualification checks as appropriate.

The ultimate structural strength requirements necessary for continued safe flight with the control surface in the jammed position must not be less than that necessary to;

(1) Maneuver the airplane between 0.25 and 1.75gs with flaps up, and 0.6 and 1.4gs with flaps down.

(2) Withstand vertical and lateral discrete gusts to 40 percent of limit gust velocity.

Note: If a rational balanced maneuver can not be achieved at the specified load factors with the jam condition, then a safety factor of 1.35 may be applied to the loads developed at the highest load factors attainable but need not exceed the load factors specified above.

Requests To Be Heard

Attendance is open to the interested public, but will be limited to the space available. Persons planning to present data or comments at the public meeting are requested to provide the FAA an abstract of their presentation by November 15, 1996. The abstract should include an estimate of the time needed to make the presentation, and should be mailed to the person identified earlier in this notice as the contact for further information. Requests received after the date specified above will be scheduled only if time is available during the meeting; however, the name of those individuals may not appear on the written agenda for the public meeting. Following each presentation, a discussion period will be allowed and all persons will be given the opportunity to open discussions on the presentation.

Public Meeting Procedures

Persons who plan to attend the public meeting should be aware of the following procedures which are established to facilitate the workings of the meeting.

1. The meeting will be open on a space available basis to all persons registered. It will be necessary to adhere to the meeting schedule in order to enable adjournment within the time allowed.

2. There will be no admission fee or other charge to attend or participate in the meeting. The opportunity to speak will be available to all persons, subject to availability of time.

3. Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

4. The meeting will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be placed in the docket.

5. The FAA will consider all materials presented at the meeting by participants. Position papers and other handout material may be accepted at the discretion of the chairperson. Enough copies should be provided for distribution to all conference participants.

6. Statements made by FAA participants at the meeting may not reflect the final FAA positions.

Issued in Renton, Washington, on October 21, 1996.

Darrell M. Pederson,

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

[FR Doc. 96–27616 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 189 and EUROCAE Working Group 46 meeting to be held December 9–12, 1996, starting at 8:30 a.m. on December 9. (On subsequent days, meeting begins at 8:00 a.m.) The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Review Comments and Allocate to Issue Teams as Required; (8) New Items for Consensus; (9) Other Business; (10) Establish Agenda for Next Meeting; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 23, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–27615 Filed 10–25–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application (96–02–C–00–SYR) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Syracuse Hancock International Airport, Syracuse, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comment must be received on or before November 27, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY, 11530. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Everett, Commissioner of Aviation, Division for the City of Syracuse, Department of Aviation, Syracuse Hancock International Airport, Syracuse, New York 13212.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Syracuse Department of Aviation under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager of the New York Airports District Office, Manager New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Syracuse Hancock International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 21, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Syracuse, Department of Aviation 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 January 14, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1995.

Proposed charge expiration date: May 1, 2000.

Total estimated PFC revenue: $14,126,567.

Brief description of proposed projects:

—Install a DeIcing Fluid Collection and Treatment System

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Syracuse Hancock International Airport.

Issued in Jamaica, New York on October 22, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 96–27617 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

[FTA Docket No. ETA–96–1890]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) University Research and Training Program;

(2) Managerial Training Program;

(3) 49 U.S.C. 5312(a) Paperwork Requirements.

DATES: Comments must be submitted before December 27, 1996.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT:

University Research and Training Program—Ms. Liz Solomon, Office of Research, Demonstration and Innovation, (202) 366–0242.

Managerial Training Program—Ms. Pauline D'Antignac, Office of Research, Demonstration and Innovation, (202) 366–0234.

49 U.S.C. 5312(a)—Mr. Henry Nejako, Office of Research, Demonstration and Innovation, (202) 366–0184.

Title: University Research and Training Program (OMB Number: 2132–0547)

Background: 49 U.S.C. 5312 authorizes the Secretary of Transportation to make grants to public and private nonprofit institutions of higher learning to assist in establishing or carrying on comprehensive research in the problems of transportation in urban and rural areas.

The information collected is submitted in the form of an application for a grant and is used to determine eligibility of grant applicants and to assure that all FTA and Federal requirements are met. This information also enables FTA and the academic community to properly define subject matter categories and to identify the kinds of organizations that are submitting proposals. Also, the information is essential to support basic and theoretical research within the academic community that will advance the current knowledge base, improve the transportation service provider's decisionmaking and management processes, and assist transit professionals to anticipate significant national issues and trends. The information is also used to report annually to Congress, the Secretary, and to the FTA Administrator on how grantees are responding to national emphasis areas and Congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Respondents: Accredited Institutions of Higher Learning.

Estimated Annual Burden on Respondents: 39.4 hours for each of the 120 responses.

Estimated Total Annual Burden: 4,728 hours.

Frequency: Annual.

Title: Managerial Training Program (OMB Number: 2132–0551)

Background: 49 U.S.C. 5323(c) authorizes the Secretary of Transportation to make grants to States and local public transportation services to provide fellowships for training personnel employed in managerial, technical, and professional positions in the public transportation field. The information collected is submitted in the form of an application and is used to determine eligibility and appropriateness of intended training in light of program goals. Collection of information for this program is also necessary to provide documentation that grant applicants and recipients are complying with appropriate FTA Circular C 6300.1A and other Federal requirements. Without this information, FTA would not be able to determine if the goals and objectives as set forth for this program are being met fully, partially, or not at all.

Respondents: State and local governments, business or other for profit, and non-profit institutions.

Estimated Annual Burden on Respondents: 3.6 hours for each of the 392 responses.

Estimated Total Annual Burden: 1,412 hours.

Frequency: Annually, semi-annually, quarterly.

Title: 49 U.S.C. 5312(a) Paperwork Requirement (OMB Number: 2132–0546)

Background: 49 U.S.C. 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, and demonstration projects that will reduce urban transportation needs, improve mass transportation service, or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

Issued: October 23, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–27620 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–57–U

Maritime Administration

[Docket S–940]

Matson Navigation Company, Inc.; Notice of Application for Temporary Written Consent Pursuant to Section 506 of the Merchant Marine Act, 1936, as amended, for the Operation of the EWA in the Pacific Coast Shuttle Service

Notice is hereby given that Matson Navigation Company, Inc. (Matson), a U.S company, by letter of October 16, 1996, requests temporary written consent pursuant to section 506 of the Merchant Marine Act, 1936, as amended (Act), for operation of the construction-differential subsidy built containership EWA (ex-PRESIDENT TYLER) in the Pacific coast shuttle service commencing December 1, 1997, until March 2, 1997, when the EWA reaches 25 years of age. Matson is currently operating the EWA in a Pacific coast shuttle service. According to Matson, the instant request was necessitated by the fleet deployment required to accomplish the drydocking described below.

Matson states that in order to comply with legal drydocking requirements of the Coast Guard and to maintain American Bureau of Shipping vessel classifications, it is in the process of rotating five of the six vessels purchased from American President Lines, Ltd. in January 1996 into a shipyard in Korea. The rotation, which includes the three C9 vessels (MAHIMAHI, ex-PRESIDENT WASHINGTON; MANOA, ex-PRESIDENT LINCOLN; and MOKIHANA, ex-PRESIDENT MONROE) and two C8 vessels (CHIEF GADAO, ex-PRESIDENT GRANT; and LIHUE, ex-PRESIDENT HOOVER), commenced in September 1996 and will not be

completed until February 1997. This drydocking schedule, Matson adds, will require both the CHIEF GADAO and LIHUE, which are no longer geographically restricted pursuant to section 506, to remain in the Pacific Alliance Service (U.S. Pacific Coast, Hawaii, Guam, Far East, U.S. Pacific Coast deployment) through February 1997 and thus be unavailable to substitute for the EWA in the Pacific coast shuttle service. Matson points out that, even if available, the CHIEF GADAO and LIHUE were specifically modified to carry the Pacific Alliance Service cargo package. The EWA was not so modified and does not have the required capacity configuration for deployment in the Pacific Alliance Service.

It is Matson's view that grant of the requested permission will further the policy of the Act by promoting a U.S. merchant marine sufficient to carry the country's domestic water-borne commerce and a substantial portion of its foreign commerce. In this connection, Matson points out that the EWA will be carrying exclusively domestic cargo between Los Angeles, California; Oakland, California; and Seattle, Washington, in the course of foreign commerce voyages between Vancouver, B.C. and these U.S. Pacific coast ports.

Matson believes that since no one besides Matson is providing an intercoastal service along the U.S. Pacific coast, the use of the EWA in the Pacific coast shuttle service cannot result in unfair competition to any domestic operator.

Any person, firm, or corporation having any interest in the application for section 506 consent and desiring to submit comments concerning Weston's request must by the close of business on November 12, 1996, file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.800 Construction-Differential Subsidies (CDS))

By Order of the Maritime Administrator.

Dated: October 23, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–27596 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–113; Notice 1]

Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company of Dearborn, Michigan, has determined that certain 1996 model year Mercury Villager and Nissan Quest vehicles, designed and engineered by Nissan, and manufactured by Ford, fail to comply with the power window requirements of 49 CFR 571.118, Federal Motor Vehicle Safety Standard (FMVSS) No. 118, ''Power-Operated Window, Partition, and Roof Panel Systems'' and filed an appropriate report pursuant to 49 CFR Part 573 ''Defect and Noncompliance Information Report.'' Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4(e) of FMVSS No. 118 requires that ''power operated windows may be closed only'' during the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors.

From September 18, 1995, through July 31, 1996, Ford manufactured approximately 57,400 Mercury Villager and 46,500 Nissan Quest vehicles that do not comply with the power window requirements of FMVSS No. 118, paragraph S4(e). The power-operated windows in these vehicles can be closed after the ignition key is turned to the ''off'' position and the right front (passenger) door is opened. The power window *cannot* be operated (opened or closed) when the ignition key is turned to the ''off'' position and the left front (driver) door is opened.

Ford supported its application for inconsequential noncompliance with the following:

''In the affected Villager and Quest vehicles, it is likely that as long as the driver's door has not been opened, an adult (the driver) would remain present in the vehicle to supervise any children because a driver would exit the vehicle through the driver's door under all but the most extraordinary circumstances. As previously noted, the power window operation is canceled when the driver door is opened—the door through which the operator would be expected to exit the vehicle—thus eliminating any potential risk associated with operation of the power windows by unsupervised children remaining in the vehicle. In addition, the design of the front door power window control switches located on the door arm rests is such that closing these windows requires the switch to be pulled up and held. Further the switches are recessed in a cavity below the switch assembly surface. The intent of these design features is to minimize the chance of unintentional activation of power window closing that could, with other switch design configurations, result from a child leaning or resting a foot on the switch. An additional feature that minimizes the potential risk of injury to unsupervised children in the affected vehicles is that no power window switch controls are located in the rear seat positions, and the control switches for the third row seat optional power quarter windows are located in an overhead console in the front passenger compartment, relatively out of sight. In addition to the items cited above to mitigate the risk of injury, the Villager and Quest owner guides warn against leaving children unattended in the vehicle, specifically warn of the potential danger of children playing with the vehicle's power windows, and identify the fact that the accessory delay feature allows the power windows to be operated for a fifteen minute period after the ignition is turned off or until the driver door is opened.

''Neither Ford or Nissan are aware of any field or owner reports or allegations of injuries related to this condition. We [Ford] believe the likelihood of unsupervised children left in one of the affected vehicles being exposed to injury during the fifteen minute period after the ignition key has been turned off and a driver has exited the vehicle through other than the driver's door is very remote, and therefore the noncompliance presents no reasonably anticipated risk to motor vehicle safety. We [Ford] request that the agency find this condition to be inconsequential to motor vehicle safety, and accordingly that Ford and Nissan be exempted from the notice and remedy requirements of the Code. The agency recently granted a petition from Volkswagen of America, Inc., as documented in Federal Register, Volume 60, page 48197, (September 18, 1995), for vehicles with power windows

operating in a manner similar to the affected Villagers and Quests.''

Interested persons are invited to submit written data, views, and arguments on the application of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, D.C. 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below. Comment closing date: November 27, 1996.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: October 23, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–27614 Filed 10–25–96; 8:45 am]

BILLING CODE 4910–59–P

federal register

Monday
October 28, 1996

Part II

Department of the Treasury

Fiscal Service

Bureau of the Public Debt

31 CFR Part 344

Regulations Governing United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds—State and Local Government Series; Final Rule

Demand Deposit Securities of the State and Local Government Series; Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

Regulations Governing United States Treasury Certificates of Indebtedness, Treasury Notes, and Treasury Bonds—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes a final rule governing United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series (SLGS). These securities are available for purchase by issuers of state and local government bonds described in Section 103 of the Internal Revenue Code for proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements of the Income Tax regulations under sections 103, 148, 149 and 150 of the Internal Revenue Code (tax regulations). This final rule makes the SLGS securities program more flexible in a manner consistent with tax policy objectives.

DATES: The regulations are effective October 28, 1996, for securities where the subscription is received on or after October 28, 1996 and are applicable except that the revised notice period for early redemptions applies to all SLGS issues. Subscribers for SLGS securities can continue to use the current forms, lining out any obsolete parts, until new forms are distributed.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, or Howard Stevens, Supervisory Program Analyst, Division of Special Investments, at 304–480–7752 or Ed Gronseth, Deputy Chief Counsel, or Jim Kramer-Wilt, Attorney/Adviser, Office of the Chief Counsel, at 304–480–5190.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Treasury, Bureau of the Public Debt, is attempting to make the SLGS securities program more attractive and flexible for State and local government issuers of debt obligations that are subject to the arbitrage and rebate rules of the Internal Revenue Code. It is the Department's intent to do so in a manner consistent with tax policy objectives and in a manner that is cost effective.

In recent years, market participants have advised the Department that aspects of the existing SLGS securities regulations impose burdens that are not needed or cost effective. On April 30, 1996, the Department published an Advanced Notice of Proposed Rulemaking, noting ten general changes the Department was considering in order to make the SLGS securities program more flexible.

There were eight letters received commenting on the Advanced Notice of Proposed Rulemaking (ANPR). In general, the comments were in favor of the ten items contained in the ANPR. Several comments suggested specific parameters for some of the ten items while others suggested the Treasury Department consider changes not contained in the ANPR.

On July 26, 1996, the Department published a proposed rule, outlining specific changes to the SLGS securities program. There were five letters received which provided seven different comments on the proposed rule.

(a) One commenter suggested that the Department consider amending 31 CFR § 344.2(a)(3) to permit issuing bonds with a maturity period exceeding 30 years. The commenter acknowledged that the calculation of SLGS securities rates past the 30-year yield curve would be difficult and indicated a willingness to accept a 30-year rate for maturities in excess of 30 years.

The Department amended the final rule to permit the issuance of bonds with maturities of up to 40 years. The maximum applicable rate for securities with a maturity in excess of 30 years is the 30-year rate.

(b) There were four comments received concerning the apparent elimination of the ''mailbox rule''. This rule had provided that the applicable rate table for any subscription was the one in effect on the date the initial subscription was faxed, post-marked or carrier date-stamped, rather than on the date received under the proposed rule. The commenters argued that if a subscriber could not lock in the SLGS rate on the pricing date, many issuers will choose open market securities in order to lock in the required yield.

The commenters argued for issuers to have the option to use the mailbox rule, rather than the ''actual receipt'' rule. The comments suggested that in order to accommodate the Department's need for five or seven days notice, the regulations should permit the issuer to lock in the maximum interest rate by mailing the initial subscription, so long as a copy of the initial subscription form (clearly marked to indicate it is a duplicate of the mailed subscription), together with proof of mailing is separately sent by means reasonably designed to arrive at the Bureau of the Public Debt within the required five/seven days notice period.

The Department considered this suggestion and amended the final rule to provide that an issuer can either lock in a SLGS rate with a timely fax to the Division of Special Investments, or, if a subscription is mailed, it must be received by Public Debt on or before the required five/seven day notice period in order to lock in the SLGS rate for the day of mailing.

The Department considers it the responsibility of the subscriber to confirm the receipt of any fax sent to Public Debt. The Division of Special Investments has multiple fax machines that register the fax number of the subscriber, even if a paper jam occurs. Therefore, subscribers sending faxed subscriptions after the close of business at Public Debt on the last day of the notice period should not have a problem getting their fax timely received or getting confirmation the next morning. If a failed attempt to subscribe is confirmed the following morning, the subscriber can lock in the SLGS rates for the previous day by immediately faxing another subscription.

(c) There were four comments stating that the addition in the proposed rule of two new standards under which the Secretary can revoke a subscription, 31 CFR § 344.1(f)(3)(ii) and 31 CFR § 344.1(f)(3)(iii), are too ambiguous and, unlike non-callable open market securities, permit the revocation of a SLGS subscription after issuance. One of the commenters suggested that the previous language be reinstated and that the regulations require a certification by the subscriber that the amounts invested were gross proceeds of a tax-exempt bond. Another commenter suggested that the authority of the Secretary to revoke issuance of SLGS securities be limited to circumstances where the issuance of SLGS securities is inconsistent with the SLGS regulations and the Secretary determines that revocation is in the public interest.

The Department considered the issues raised by these comments and has deleted the language of the proposed regulations and has retained the authority of the Secretary to revoke subscriptions for improper certifications consistent with the previous regulations. Use of SLGS securities in a manner which violates the tax regulations will be dealt with under the tax laws.

(d) Another comment suggested that the Department consider issuing zero interest SLGS securities where the

subscriptions for such securities are received more than 60 days before the issue date (the current requirement). The suggestion was that the Department extend this period to one year.

The Department decided that maintaining subscription requests for longer than 60 days is an administrative burden and is not including this suggestion in the final rule.

(e) One comment suggested that Public Debt put the daily SLGS interest rate table on the World Wide Web.

Public Debt is currently posting these rates on the Internet at ftp://ftp.publicdebt.treas.gov/secrate.txt

(f) Another comment advised that the terms used in the summary of the proposed regulations and the text of the proposed regulations to describe amounts which can be invested in SLGS securities are inconsistent and create ambiguity.

The Department considered the suggestion and amended section 344.0(a) to specify that SLGS can be purchased with any amounts that constitute gross proceeds of an issue or any other amounts which assist an issuer of tax-exempt bonds in complying with any applicable provisions of the Internal Revenue Code relating to such tax exemption.

(g) The final comment expressed the concern that the requirement for a subscriber to provide the employer identification number only for the issuer would unfairly penalize issuers in cases where the six-month penalty for failure to settle a SLGS securities subscription is due to the actions of a conduit borrower.

The concern of the commenter was that most states and cities have loan programs for various purposes such as housing, health care and education which service multiple conduit obligors. However, if any one conduit obligor's failure to comply could subject all conduit obligors under such a program to a six-month freeze-out, then no conduit obligor could structure its plan of investment based on the assumption that SLGS securities would be available to it as needed.

The Department decided to amend the language of section 344.1(h) to provide that the six-month penalty applies to the government body unless the government body provides the Tax Identification Number of the conduit borrower to the Department when non-settlement occurs.

The Department made three additional changes that clarify or improve the SLGS securities program.

(i) In section 344.5(a)(3)(ii), it is now clear that either a premium or discount can occur when calculating early redemption value, depending on whether the Treasury borrowing rate is lower or higher than the stated interest rate of the early-redeemed SLGS security.

The Department added language to this section and to Appendix B to make this clarification.

(ii) The maximum amount by which a subscription can be amended is given greater flexibility by making the standard of section 344.3(b)(3)(ii) ''the greater of $10 million or ten percent of the initial subscription amount.''

(iii) Section 344.5(a)(3)(ii) is revised to read that the term ''current Treasury borrowing rate'' means the applicable rate shown in the table of maximum interest rates payable on United States securities—State and Local government Series, for the day the request for early redemption is received by Public Debt, plus *5 basis points*. Sections 344.5(a)(4)(ii) and 344.5(a)(5)(iii) are revised to refer to the definition of the term ''current Treasury borrowing rate'' as set forth in section 344.5(a)(3)(ii).

II. Section By Section Summary

Subpart A—General Information

Provisions included in the general information section apply to time deposit and demand deposit State and Local Government Series securities. Changes from the 1995 regulations are as follows:

Subpart A—General Information

(1) Section 344.0(a)—This section is amended to read that SLGS can be purchased with any amounts that constitute gross proceeds of an issue or any other amounts which assist an issuer of tax-exempt bonds in complying with applicable provisions of the Internal Revenue Code relating to such tax exemption.

(2) Section 344.0(b)—This section is changed to redefine the term ''government body'' to make it clear SLGS securities are issued only to state and local governments and not to conduit borrowers.

(3) Section 344.0(c)—A new section is added to indicate that time deposit SLGS securities are issued in a minimum amount of $1,000, or in any increments of not less than $1.00. Demand Deposit securities are still issued in any increment over the $1,000 minimum. The minimum maturity period for zero percent certificates of indebtedness is reduced from thirty days to fifteen days.

(4) Section 344.1(a)—This section is changed to note that copies of the circular can be obtained from the Division of Special Investments.

(5) Section 344.1(h)—A new section is added on noncompliance which applies to all subparts and the previous noncompliance section in each subpart is deleted. This section also clarifies that late payment fees and administrative fees are due on demand. This section further clarifies that the term ''government body'' is defined as the state or local government entity rather than the conduit borrower for the placement of the penalty for non-compliance, unless the state or local government entity provides the Tax Identification Number of the conduit borrower that caused the non-settlement to occur.

(6) Section 344.1(i)—Another general section is added, titled General Redemption Provisions, stating a security will not be called for redemption by the Secretary of the Treasury prior to maturity. If a security matures on a non-business day, it will be redeemed on the next business day. This section applies to all subparts and duplications of this section that exist in the previous regulations are deleted.

(7) Section 344.1(j)—A new section is added to clarify that any reference to days refers to calendar days, unless otherwise noted.

Subpart B—Time Deposit Securities

(1) Section 344.2(a)(1)—The reference to the $1,000 minimum is deleted.

(2) Section 344.2(a)(2)—In light of Section 344.0(c), the reference to the $1,000 minimum amount and the $100 increment above this amount is deleted.

(3) Section 344.2(a)(3)—In light of Section 344.0(c), the reference to the $1,000 minimum amount and the increment above this amount is deleted. This section is also amended to provide for the issuance of bonds with maturities up to 40 years. The maximum applicable rate for securities with maturities in excess of 30 years is the 30-year rate.

(4) Section 344.2(b)—The last sentence of this section states the rates specified in the tables are five basis points below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(5) Section 344.2(c)(2)—This section is amended to provide for alternative methods of payment of redemptions prior to maturity, such as by Fedwire.

(6) Section 344.3(b)(1)—This section is amended to indicate that subscriptions must be received by Public Debt at least five days prior to issue date for subscriptions of $10 million or less and seven days for subscriptions of more than $10 million. Subscriptions of $10 million or less can be canceled without penalty up to five

days before the date of issuance. Subscriptions of more than $10 million can be canceled without penalty up to seven days before the date of issuance.

This section also notes that a subscription sent in letter form will not be accepted unless it provides the Tax Identification Number of the government body.

In the example of an initial subscription in letter form, the words ''or other entity'' have been deleted to emphasize that the proper Tax Identification Number to insert is that of the state or local government owner, not that of a trustee bank or a conduit borrower.

This section further provides that a subscriber can lock in the SLGS rates for the day it either sends a fax to Public Debt on or before the five/seven day notice period or by mailing a subscription, provided the mailed subscription is received by Public Debt on or before the five/seven day notice period. It is the responsibility of the sender of the fax to confirm its receipt.

(7) Section 344.3(b)(4)—This section is revised to read that no initial subscription is required when a final subscription is received at least five days before the issue date for subscriptions of $10 million or less or at least seven days before the issue date for subscriptions of over $10 million.

(8) Section 344.3(c)—This section is amended to eliminate all certifications other than the former section 344.3(c)(3), which has been revised. The ''all or nothing'' rule of the certification in the former section 344.3(c)(1) is eliminated to facilitate the use of the time deposit securities for investment of proceeds that are subject to arbitrage rebate. This change alleviates some of the need to calculate rebate if funds can be invested at the bond yield for a longer term. In general, to the extent that the certifications were a result of concerns about abuse of the tax regulations and the SLGS program, the Department determined that the yield restriction and rebate rules are more appropriately enforced under the tax regulations. The certification formerly in section 344.3(c)(3) is revised to apply only to SLGS securities subscribed for prior to December 27, 1976. The certification formerly in section 344.3(c)(4) is eliminated because of certain prior changes to the SLGS securities regulations (such as the change to daily SLGS securities rates), and because of changes to the early redemption penalties under section 344.5, contained in these final regulations. Additionally, the word ''beneficial owner'' is changed to ''government body'' to make it clear that the proper Tax Identification Number is that of the government entity.

(9) Section 344.3(b)(3)(ii)—This section is amended to read that the aggregate subscription amount can not be changed by more than the greater of $10 million or ten percent of the initial subscription amount.

(10) Section 344.4(b)—This section is eliminated.

(11) Section 344.3(b)(4)(c)—This section is amended to read that the final subscription must be for a total principal amount that is no more than the greater of either $10 million or ten percent above or below the aggregate principal amount specified in the initial subscription.

(12) Section 344.5(a)—This section is eliminated.

(13) Section 344.5(b)(1)—This section is renumbered 344.5(a)(1) and is amended to provide that zero interest certificates can be redeemed before maturity at the owner's option no earlier than fifteen days before maturity for certificates of fifteen to twenty-nine days duration and no earlier than thirty days after the issue date in the case of all other certificates, notes or bonds.

(14) Section 344.5(a)(2)—This section is a new section number and the body of the section consists of the former section 344.5(b)(2). It is amended to change the word ''subscriber'' to ''government body'' in the 3rd sentence of this section. This section is further amended to read that notice of redemption must be received by Public Debt no less than ten days before the requested redemption date, rather than the current fifteen-day requirement.

(15) Section 344.5(a)(3)—This is a new section which provides for the calculation of redemption proceeds for SLGS securities subscribed for on or after the effective date of this final rule. This section changes the formula for determining the early redemption value of SLGS securities to one where the remaining interest and principal payments are discounted by the current Treasury borrowing rate for the remaining term to maturity of the security redeemed.

This results in a premium or a discount in cases where the Treasury borrowing rate is lower or higher than the stated interest rate of the SLGS securities. This section further refers to Appendix B at the end of Part 344 for the calculation of the formula.

This section provides no market charge for zero interest time deposit securities. The redemption proceeds for a zero interest security are a return of the principal invested.

(16) Sections 344.5(a)(3)(ii), 344.5(a)(4)(ii) and 344.5(a)(5)(iii) are amended to redefine the term ''current Treasury borrowing rate''. The term is defined in section 344.5(a)(3)(ii) and the other two sections refer to the definition in this section.

(17) Sections 344.5(b)(3), (b)(4) and (b)(5)—These sections are renumbered 344.5(a)(4), (a)(5) and (a)(6) respectively and remain unchanged.

Subpart C—Demand Deposit Securities

(1) Section 344.6(a)—This section is revised to delete the reference to a $1,000 minimum investment. This is now incorporated into the new general section, 344.0(c).

(2) Section 344.6(b)(3)—Simultaneously with the publication of these final regulations, the Department is publishing a Federal Register notice which provides the marginal tax rate and the Treasury Administrative Cost (TAC) used in the demand deposit program.

(3) Section 344.7(a)—This section is amended by stating that subscriptions for $10 million or less must be received by Public Debt at least five days prior to the date of issue and requires that subscriptions of over $10 million be received by Public Debt at least seven days prior to the date of issue.

(4) Section 344.7 (c)(1)—This section is removed since under the final rule, the $35 million cap on issues of demand deposit securities is eliminated.

(5) Section 344.7(c)(2) through (c)(6)—These sections are eliminated because the certifications can be administered more effectively under the tax regulations of Section 148 of the Internal Revenue Code. The tax regulations will be amended to reflect the transfer of these certifications (to the extent not already covered by the tax regulations).

(6) Section 344.8(b)—This section is eliminated.

(7) Section 344.9(a)—This section is amended to state that notice of redemptions for subscriptions of more than $10 million must be received at least three business days prior to the scheduled date of redemption. Redemption notice for subscriptions of $10 million or less remains unchanged at one business day. This section also provides for payments by Fedwire.

(8) Section 344.9(c)—This section is eliminated because the rules regarding expenditure of proceeds are covered by the tax regulations.

Subpart D—Special Zero Interest Securities

(1) Section 344.10—This section is amended to state that the Department has discontinued the issuance of this type of security as of October 28, 1996.

The amendment to the time deposit security subpart, which permits investment for rebate and yield restriction purposes, eliminates the need for a separate Special Zero Interest Program. Under the revisions, the following sections of this Subpart apply only to special zero interest securities subscribed for before October 28, 1996. Subpart B, governing time deposit securities, is changed in a manner that permits the redemption of time deposit zero interest securities without penalty. Investors that hold special zero interest securities subscribed for before October 28, 1996 can still redeem these securities without penalty.

(2) Section 344.11—This section is eliminated.

(3) Section 344.12—This section is eliminated.

(4) Section 344.13—This section is renumbered section 344.11 and remains in effect for the special zero interest accounts now outstanding. The word ''subscriber'' is changed to ''government body'' to clarify that the proper Tax Identification Number is that of the government entity. Redemption notices must be received by Public Debt within the proscribed limits.

Appendix A to Part 344—There is a clarifying statement that these formulas apply to SLGS securities subscribed for before the effective date of this final rule.

Appendix B to Part 344—This appendix contains a new formula for determining the redemption value for all early-redeemed time deposit SLGS securities. This formula reflects the change that the remaining interest and principal payments are discounted by the Treasury borrowing rate for the remaining term to maturity of the security redeemed. This results in a premium or a discount, depending on whether the Treasury borrowing rate is lower or higher than the stated interest rate of the SLGS security.

Procedural Requirements

This final rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, an assessment of anticipated benefits, costs and regulatory alternatives is not required.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). Since no notice of proposed Rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The final rule does not alter the collection of information previously reviewed and approved by the Office of Management and Budget, in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1535–0091. The principal purpose of the final rule is to make the SLGS securities program more attractive and flexible for investors. The revision does not impose a new collection of information requirement.

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Securities.

Dated: October 21, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, Part 344 of title 31 of the Code of Federal Regulations is revised to read as follows:

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS, TREASURY NOTES, AND TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Sec.
344.0 Offering of securities.
344.1 General provisions.

Subpart B—Time Deposit Securities

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

Subpart C—Demand Deposit Securities

344.6 Description of securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
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Subpart D—Special Zero Interest Securities

344.10 General.
344.11 Redemption.

Appendix A to Part 344—Early Redemption Market Charge Formulas and Examples for Subscriptions From September 1, 1989, Through October 27, 1996

Appendix B to Part 344—Formula for Determining Redemption Value for Securities Subscribed for and Early-Redeemed on or After October 28, 1996

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102.

Subpart A—General Information

§ 344.0 Offering of securities.

(a) In order to provide issuers of tax exempt securities with investments from any amounts that constitute gross proceeds of an issue or any other amounts which assist an issuer of tax-exempt bonds in complying with applicable provisions of the Internal Revenue Code relating to such tax exemption, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities:

(i) United States Treasury Certificates of Indebtedness,

(ii) United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(b) As appropriate, the definitions of terms used in Part 344 are those found in the relevant portions of the Internal Revenue Code and the tax regulations. The term ''government body'' refers to issuers of state or local government bonds described in section 103 of the Internal Revenue Code.

(c) The securities in paragraph (a) of this section are issued in a minimum amount of $1,000, or in any larger amount, in increments of not less than $1.00 for time deposit securities and in any increments over the $1,000 minimum for demand deposit securities.

(d) This offering continues until terminated by the Secretary of the Treasury.

§ 344.1 General provisions.

(a) *Regulations.* United States Treasury securities—State and Local Government Series shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300 (31 CFR Part 306), to the extent applicable. Copies of the circular can be obtained from the Bureau of the Public Debt, Division of Special Investments—Room 309, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396.

(b) *Issuance.* The securities are issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV. Transfer of securities by sale, exchange, assignment, pledge, or otherwise is not permitted.

(c) *Transfers.* Securities held in an account of any one type, i.e., time deposit, demand deposit, or special zero interest, cannot be transferred within that account or to an account of any other type.

(d) *Fiscal agents.* Selected Federal Reserve Banks and Branches, as fiscal agents of the United States, can be designated to perform such services requested of them by the Secretary of the Treasury in connection with the

purchase of, transactions involving, and redemption of, the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or final subscription on behalf of a government body, it must certify it is acting under the latter's specific authorization. Ordinarily, evidence of such authority is not required. Subscriptions submitted by an agent, other than a commercial bank, must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, must specify the legal authority under which the agent was designated, and must relate by its terms to the investment action undertaken. Subscriptions unsupported by such evidence are not acceptable.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, are not acceptable if unsigned, inappropriately completed, or not timely submitted. Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to Part 344. The Secretary of the Treasury reserves the right:

(1) To reject any application for the purchase of securities under this offering;

(2) To refuse to issue any such securities in any case or any class(es) of cases; and

(3) To revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber (other than as the result of an inadvertent error), if the Secretary deems such action in the public interest.

(g) *Debt limit contingency.* The Department of the Treasury reserves the right to change or suspend the terms and conditions of this offering, including provisions relating to subscriptions for, and issuance of, securities, interest payments, redemptions, and rollovers, as well as notices relating hereto, at any time the Secretary determines that the issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Secretary deems appropriate.

(h) *Noncompliance.* The penalty imposed on any government body which fails to make settlement on a subscription once submitted and not canceled timely shall be to render the government body ineligible thereafter to subscribe for securities under any offering in Part 344 for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, whichever occurs first.

(1) The penalty is imposed on the government body unless the government body provides the Tax Identification Number of a conduit borrower that is the actual party failing to make settlement of a subscription. If this number is provided for a conduit borrower, the conduit borrower shall be the entity on which the six-month penalty is imposed.

(2) The Division of Special Investments can determine to waive the six-month penalty, pursuant to the provisions governing the waiver of regulations set forth under 31 CFR 306.126. Where settlement occurs after the proposed issue date and the Division of Special Investments determines, pursuant to 31 CFR 306.126, that settlement is acceptable on an exception basis, the six-month penalty will be waived and the government body shall be subject to a late payment assessment. The late payment assessment will equal the amount of interest that will have accrued on the securities from the proposed issue date to the date of settlement, as well as an administrative fee of $100 per subscription. Assessments of late payment fees and administrative fees under Part 344 are due on demand.

(i) *General redemption provisions.* A security can not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Department will make payment of the principal amount and interest due to the owner thereof. A security scheduled for maturity on a non-business day will be redeemed on the next business day.

(j) *Business or calendar days.* Unless otherwise noted, any reference herein to days refers to calendar days.

Subpart B—Time Deposit Securities

§ 344.2 Description of securities.

(a) *Terms.* (1) *Certificates.* The certificates are issued with maturity periods fixed by the government body, from thirty days up to and including one year, or for any intervening period; provided, for certificates that bear no interest, the maturity period can be fixed by the government body from fifteen days up to and including one year or for any intervening period.

(2) *Notes.* The notes are issued with maturity periods fixed by the government body, from one year and one day up to and including ten years, or for any intervening period.

(3) *Bonds.* The bonds are issued with maturity periods fixed by the government body, from ten years and one day up to and including forty years, or for any intervening period; provided that for any subscription for a bond exceeding 30 years, the maximum available rate shall be the rate on a 30-year bond.

(b) *Interest rate.* Each security shall bear such rate of interest the government body designates, but the rate shall not exceed the maximum interest rate. The applicable maximum interest rates for each day shall equal rates shown in a SLGS securities rate table, which is released by the Department to the public by 10:00 a.m., Eastern time, each business day. If the Department finds that due to circumstances beyond its control the rates are not available to the public by 10:00 a.m., Eastern time, on any given business day, the applicable interest for the last preceding business day shall apply. The applicable rate table for any subscription is the one in effect on the date the initial subscription is faxed, postmarked or carrier date stamped. The rates specified in the tables are five basis points below the then current estimated Treasury borrowing rate for a Treasury security of comparable maturity. These rates can be obtained:

(1) In the Commerce Department's Economic Bulletin Board;

(2) By contacting the Division of Special Investment's automated fax at (304) 480–7548;

(3) By calling the Division of Special Investments at (304) 480–7752; or

(4) On the Internet at ftp://ftp.publicdebt.treas.gov/secrate.txt

(c) *Payment.* (1) Interest computation and payment dates. Interest on a certificate is computed on an annual basis and is paid at maturity with the principal. Interest on a note or bond is paid semi-annually. The government body specifies the first interest payment date, which must occur any time between thirty days and one year of the date of issue, and the final interest payment date must coincide with the maturity date of the security. Interest for other than a full semi-annual interest period is computed on the basis of a 365-day or 366-day year (for certificates) and on the basis of the exact number of days in the half-year (for notes and bonds). See the appendix to subpart E of Part 306 of this chapter for rules regarding computation of interest.

(2) *Method of payment.* Payment can be made by the Automated Clearing House method (ACH) for the owner's account at a financial institution

designated by the owner. Redemptions prior to maturity are paid by Fedwire. To the extent applicable, provisions of § 357.26 on ''Payments'', set forth in 31 CFR Part 357 and provisions of 31 CFR Part 370, shall govern ACH payments made under this offering. The Department of the Treasury can employ alternate payment procedures, instead of ACH, in any case, or class of cases where operational considerations necessitate such action.

§ 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396. Initial and final subscriptions can be submitted by fax at (304) 480–6818, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, should be sent by certified or registered mail.

(b) *Initial subscriptions.* (1) An initial subscription, either on a designated Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be received by Public Debt at least five days before the issue date for subscriptions of $10 million or less, and at least seven days before the issue date for subscriptions of over $10 million, but in no event will subscriptions be received more than 60 days prior to issue date. Subscriptions can be sent by fax on (304) 480–6818, carrier service, U.S. Postal Service or other means. If the subscription is faxed, the original document must be received by Public Debt no later than the issue date. Initial subscriptions of $10 million or less can be canceled without penalty by the subscriber prior to the fifth day before issue date. If the fifth day before issue date is a non-business day, the cancellation must occur on the preceding business day. Subscriptions of more than $10 million can be canceled without penalty by the subscriber prior to the seventh day before issue date. For example, if securities totaling $10 million or less are to be issued on March 16, the initial subscription must be received by Public Debt no later than March 11. If securities totaling more than $10 million are to be issued on March 16, the initial subscription must be received by Public Debt no later than March 9. A subscriber can lock in the SLGS rate for the day it submits its subscription by sending a fax to the Division of Special Investments on or before the five/seven day notice period. A subscriber can also lock in the SLGS rate on the date of the postmark of a mailed subscription, provided the subscription is received on or before the five/seven day notice period. It is the responsibility of the sender of a faxed subscription to confirm its receipt. If the initial subscription is in letter form, it must contain the Tax Identification Number of the government body or it is unacceptable. It should read substantially as follows:

To: Bureau of the Public Debt

_____

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3–72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least five/seven days after the date of this subscription:

Principal Amount
$ _____
Issue Date

_____

The undersigned agrees the final subscription and payment will be submitted on or before the issue date.

_____
(Tax I.D. Number of state or local government body eligible to purchase State and Local Government Series securities)

_____
(Name of state or local government body eligible to purchase State and Local Government Series securities)

(Date) _____
By _____
(Signature and Title)

(2) The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.1(h), relating to the failure to complete a subscription, apply to initial and to final subscriptions.

(3) An initial subscription can be amended on or before the issue date, but no later than 3:00 p.m., Eastern time, on the issue date. Notification can be faxed to the Bureau of the Public Debt at (304) 480–6818 provided the request is clearly identified as an amendment and is immediately followed by the submission, by mail or other carrier, of written notification. Amendments to initial subscriptions are acceptable with the following exceptions:

(i) The issue date can not be changed to require issuance earlier than the issue date originally specified. The issue date can be changed up to 7 days after the original issue date. If such a change is made, notification should be provided to the Bureau of the Public Debt as soon as possible, but no later than 3:00 p.m., Eastern time, one business day before the originally specified issue date;

(ii) The aggregate amount can not be changed by more than the greater of $10 million or ten percent above or below the aggregate principal amount specified in the initial subscription;

(iii) An interest rate can not be changed to a rate that exceeds the maximum interest rate in the table that was in effect for a security of comparable maturity on the date the initial subscription was submitted under the provisions of § 344.3(b)(1); and

(iv) Where an amendment is not submitted timely, the Division of Special Investments can determine, pursuant to the provisions governing waiver of regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription will be assessed. This administrative fee is due on demand as provided for in § 344.1(h). The Secretary reserves the right to reject amendments which are not submitted timely.

(4) No initial subscription is required where a final subscription is received at least five days before the issue date for subscriptions of $10 million or less and at least seven days before the issue date for subscriptions of over $10 million. Such final subscription is treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and can be amended on or before the issue date, subject to the exceptions in paragraph (b)(3) of this section.

(c) *Final subscriptions.* A final subscription must be received by the Bureau of the Public Debt on or before the issue date, but no later than 3:00 p.m., Eastern time, on the issue date. The final subscription can be faxed to the Bureau of the Public Debt at (304) 480–6818, provided the fax is properly identified as a final subscription and is immediately followed by the submission of the original subscription form by mail or other carrier. The final subscription must be for a total principal amount that is no more than the greater of either $10 million or ten percent above or below the aggregate principal amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the Taxpayer Identification Number of the government body, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and interest payment dates (in the case of

notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. The final subscription must contain a statement by the subscriber that none of the proceeds submitted in payment is derived (directly or indirectly) from the redemption before maturity of other securities of the State and Local Government Series subscribed for on or before December 27, 1976.

§ 344.4 Issue date and payment.

(a) *General.* The subscriber shall fix the issue date of each security in the initial subscription. The issue date must be a business day and can not exceed by more than sixty days the date the initial subscription is received by Public Debt. Full payment for each subscription must be submitted by the Fedwire funds transfer system with credit directed to the Treasury's General Account. Full payment should be submitted by 3:00 p.m., Eastern time, to ensure that settlement of the securities occurs on the date of issue.

(b) [Reserved].

§ 344.5 Redemption.

(a) *Redemption before maturity*—(1) *In general.* A security can be redeemed at the owner's option no earlier than twenty-five days after the issue date in the case of a certificate of thirty days or more, no earlier than fifteen days before the scheduled maturity for zero interest certificates of fifteen to twenty-nine days maturity, and no earlier than thirty days after the issue date in the case of a note or bond. Partial redemptions can be requested in any amount; however, an account balance of less than $1,000 will be redeemed in total.

(2) *Notice.* Notice of redemption prior to maturity must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396. The notice must be received by Public Debt no less than ten days before the requested redemption date, but no more than sixty days before the requested redemption date. The notice must show the account number, the maturities of the securities to be redeemed, and the Tax Identification Number of the government body. A notice of redemption prior to maturity can not be canceled.

(3) *Redemption proceeds—Subscriptions on or after October 28, 1996.* For securities subscribed for on or after October 28, 1996, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, interest is paid for the fractional interest period since the last interest payment date.

(ii) *Redemption value.* The remaining interest and principal payments are discounted by the current Treasury borrowing rate for the remaining term to maturity of the security redeemed. This results in a premium or discount to the government body, depending on whether the current Treasury borrowing rate is lower or higher than the stated interest rate of the early-redeemed SLGS security. This does not apply to SLGS securities subscribed for before October 28, 1996. The term ''current Treasury borrowing rate'' means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series—for the day the request for early redemption is received by Public Debt, plus five basis points. There is no market charge for the redemption of zero interest time deposit securities subscribed for on or after October 28, 1996. Redemption proceeds in the case of a zero-interest security are a return of the principal invested. The formulas for calculating the redemption value under this section, including examples of the determination of premiums and discounts are set forth in Appendix B of this Part.

(4) *Redemption proceeds—Subscriptions from September 1, 1989, through October 27, 1996.* For securities subscribed for from September 1, 1989, through October 27, 1996, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* If a security is redeemed before maturity on a date other than a scheduled interest payment date, interest is paid for the fractional interest period since the last interest payment date.

(ii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be the present value of the future increased borrowing cost to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current Treasury borrowing rate as the discount factor. The term ''current Treasury borrowing rate'' is determined in section 344.5(a)(3)(ii). Where redemption is requested on a date less than thirty days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of thirty days. The market charge for bonds, notes, and certificates of indebtedness can be computed by use of the formulas in Appendix A to this Part.

(5) *Redemption proceeds—Subscriptions from December 28, 1976, through August 31, 1989.* For securities subscribed for from December 28, 1976, through August 31, 1989, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of the original interest rate at which the security was issued, or the interest rate that would have been set at the time of the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than a scheduled interest payment date, no interest is paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (a)(5)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semi-annually thereon, from the date of each overpayment to the date of redemption. The interest rate used used in calculating the interest on the overpayment shall be one-eighth of one percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Market charge.* An amount shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security

prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount shall be calculated using the formula in paragraph (a)(3)(ii) of this section.

(6) *Redemption proceeds—Subscriptions on or before December 27, 1976.* For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated as follows.

(i) The interest for the entire period the security was outstanding shall be re-calculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semi-annual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of:

(A) One-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption; or

(B) One-fourth of one percent.

(ii) There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

(b) [Reserved]

Subpart C—Demand Deposit Securities

§ 344.6 Description of securities.

(a) *Terms.* The securities are one-day certificates of indebtedness. Each subscription is established as a unique account. Securities are automatically rolled over each day unless redemption is requested.

(b) *Interest rate.*

(1) Each security shall bear a variable rate of interest based on an adjustment of the average yield for three-month Treasury bills at the most recent auction. A new rate is effective on the first business day following the regular auction of three-month Treasury bills and is shown in the SLGS rate table, available to the public on such business day. Interest is accrued and added to principal daily. Interest is computed on the balance of the principal, plus interest accrued through the preceding day.

(2)(i) The annualized effective demand deposit rate in decimals, designated ''I'' in Equation 1 is calculated as:

$$I = \left[\left(\frac{100}{P}\right)^{Y/DTM} - 1\right] \times (1 - MTR) - TAC$$

(Equation 1)

where

P=Average auction price for the most recently auctioned 13-week Treasury bill, per hundred, to three decimals.

Y=365 if the year following issue date does not contain a leap year day and 366 if it does contain a leap year day.

DTM=The number of days from date of issue to maturity for the most recently auctioned 13-week Treasury bill.

MTR=Estimated marginal tax rate, in decimals, of purchasers of tax-exempt bonds.

TAC=Treasury administrative costs, in decimals.

(ii) The daily factor for the demand deposit rate is then calculated as follows:

$$DDR = (1 + I)^{1/Y} - 1$$

(Equation 2)

(3) Information on the estimated average marginal tax rate and costs for administering the demand deposit State and Local Government Series securities program, both to be determined by Treasury from time to time, will be published in the Federal Register.

(c) *Payment.* Interest earned on the securities is added to the principal and is reinvested daily until redemption. At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, the Department will invest any unredeemed demand deposit securities in special ninety-day certificates of indebtedness. These ninety-day certificates are payable at maturity, but redeemable before maturity, provided funds are available for redemption, or reinvested in demand deposit securities when regular Treasury borrowing operations resume, both at the owner's option. Funds invested in the ninety-day certificates of indebtedness earn simple interest equal to the daily factor in effect at the time demand deposit security issuance is suspended, multiplied by the number of days outstanding.

§ 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396. Subscriptions must be submitted on a designated Treasury form, must specify the principal amount invested and the issue date, and must be signed by an official authorized to make the purchase. The Bureau of the Public Debt must receive the subscription at least five days before the issue date for subscriptions of $10 million or less and at least seven days before the issue date for subscriptions of more than $10 million. Subscriptions for $10 million or less can be canceled without penalty up to five days prior to the issue date. Subscriptions for more than $10 million can be canceled without penalty up to seven days prior to the issue date. The subscription can be submitted by fax at (304) 480–6818, by certified or registered mail, or by other carrier. If faxed, the original subscription form must be received by the Division of Special Investments by 3:00 p.m., Eastern time, on the issue date. Public Debt will not accept subscriptions for demand deposit securities more than 60 days prior to the issue date.

(b) *Amending subscriptions.* The principal amount to be invested can be changed without penalty on or before the issue date, but no later than 1:00 p.m. Eastern time, on the issue date. The request must be clearly identified as an amendment and must be followed immediately by the submission, by mail or other carrier, of written notification. Where an amendment is not submitted timely, the Division of Special Investments can determine, pursuant to the provisions governing waiver of

regulations set forth under 31 CFR 306.126, that such an amendment is acceptable on an exception basis. Where an amendment is determined acceptable on an exception basis, the amended information shall be used as the basis for issuing the securities, and an administrative fee of $100 per subscription is then assessed. This administrative fee is due on demand as provided for in § 344.1(h). The Secretary reserves the right to reject amendments which are not submitted timely.

§ 344.8 Issue date and payment.

The subscriber shall fix the issue date on the subscription at least five days after receipt of the subscription by the Division of Special Investments for subscriptions of $10 million or less and seven days after receipt of the subscription by the Division of Special Investments for subscriptions of more than $10 million. Full payment for each subscription must be submitted by the Fedwire funds transfer system with credit directed to the Treasury's General Account. Full payment should be received by the Division of Special Investments by 3:00 p.m., Eastern time, to ensure that settlement on the securities occurs on the issue date.

§ 344.9 Redemption.

(a) *General.* A security can be redeemed at the owner's option, provided a request for redemption is received not less than one business day prior to the requested redemption date for redemptions of $10 million or less and received not less than three business days for redemptions of more than $10 million. Partial redemptions can be requested in any amount; however, an account balance of less than $1,000 is redeemed in total. Payment is made by Fedwire.

(b) *Notice.* Notice of redemption must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396. The notice can be submitted by fax to the Bureau of the Public Debt at (304) 480–6818, by mail, or by other carrier. The notice must show the account number and the Tax Identification Number of the government body. The notice of redemption must be received at the Bureau of the Public Debt by 1:00 p.m., Eastern time on the required day.

Subpart D—Special Zero Interest Securities

§ 344.10 General.

Provisions of subpart B of this Part (Time Deposit Securities) apply except as specified in subpart D of this Part. Special zero interest securities can not be subscribed for after October 28, 1996. All zero interest securities subscribed for after October 28, 1996 will be zero interest time deposit securities, subject to the rules of subpart B of this Part.

§ 344.11 Redemption.

(a) *Before maturity.* Provisions of Section 344.5(a) apply. In general, a security can be redeemed at the owner's option no earlier than twenty-five days after the issue date in the case of a certificate and one year after the issue date in the case of a note. No market charge or penalty shall apply in the case of the redemption of a special zero interest security before maturity.

(b) *Notice.* Notice of redemption prior to maturity must be submitted, either on a designated Treasury form or by letter, by the official(s) authorized to redeem the securities, as shown on the final subscription form, to the Division of Special Investments, Bureau of the Public Debt, 200 Third Street, P.O. Box 396, Parkersburg, WV 26102–0396. The notice can be submitted by fax to the Bureau of the Public Debt at (304) 480–6818, by mail, or by other carrier. The notice must show the account number, the maturities of the securities to be redeemed, and the Tax Identification Number of the government body. The notice must be received by Public Debt no less than ten days before the requested redemption date, but no more than sixty days before the requested redemption date. A notice of redemption prior to maturity cannot be canceled.

Appendix A to Part 344—Early Redemption Market Charge Formulas and Examples for Subscriptions From September 1, 1989, Through October 27, 1996

A. The amount of the market charge for bonds and notes subscribed for before October 28, 1996 can be determined by the following formula:

$$M = \frac{\left(\frac{b}{2}\right) x \left(\frac{r}{s}\right) + \left(\frac{b}{2}\right) a_{n\neg}}{1 + \left(\frac{r}{s}\right) x \left(\frac{i}{2}\right)}$$

(Equation 1)

where:

M=Market charge

b=increased annual borrowing cost (i.e., principal multiplied by the excess current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r=number of days from redemption date to next interest payment date

s=number of days in current semi-annual period

i=Treasury borrowing rate over the remaining term to maturity, based on semi-annual interest payments and expressed in decimals.

n=number of remaining full semi-annual periods from the redemption date to the original maturity date, except that if the redemption date is on an interest payment date, n will be one less than the number of full semi-annual periods remaining to maturity.

$v^n=1/(1 + i/2)^n$=present value of 1 due at the end of n periods (Equation 2)

$a_a = (1-v^n)/(i/2) = v + v^2 + v^3 + ... + v^n$ = present value of 1 per period for n periods (Equation 3)

B. The application of this formula can be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000)×(11% − 8%)

(4) The market charge is computed as follows:

$$M = \frac{(\$18,000/2)\ x\ (150/181) + (\$18,000/2)a_{n\neg}}{1 + (150/181)(.11/2)}$$

(Equation 4)

$$M = \frac{(\$7,458.56) + (\$9,000)a_{n\neg}}{1.045580111}$$

(Equation 5)

$$M = \frac{(\$7,458.56) + (\$9,000)\ x \left[\frac{1 - \frac{1}{(1+.11/2)^{12}}}{(.11/2)}\right]}{1.045580111}$$

(Equation 6)

$$M = \frac{(\$7,458.56) + (\$9,000)(8.618517849)}{1.045580111}$$

(Equation 7)

$$M = \frac{(\$7,458.56) + (\$77,566.66)}{1.045580111}$$

(Equation 8)

$$M = \$81,318.71$$

(Equation 9)

C. The amount of the market charge for certificates subscribed for before October 28, 1996 can be determined through use of the following formula:

$$M = \frac{(b)\left(\frac{r}{s}\right)}{1 + \frac{r}{s}(i)}$$

(Equation 10)

where

M=market charge

b=increased borrowing cost for full period

r=number of days from redemption date to original maturity date

s=number of days in current annual period (365 or 366)

i=current borrowing rate expressed in decimals (discount factor)

D. The application of this formula can be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987, to November 1, 1987, is 11.8%.

(3) The increased annual borrowing cost is $900. ($50,000) × (11.8%-10%)

(4) The market charge is computed as follows:

$$M = \frac{\$900\left(\frac{123}{365}\right)}{1+\left(\frac{123}{365}\right)(.118)} =$$

(Equation 11)

$$\frac{\$303.29}{1.039764384} =$$

(Equation 12)

$291.69

(Equation 13)

Appendix B to Part 344—Formula for Determining Redemption Value for Securities Subscribed for and Early-Redeemed on or After October 28, 1996

This results in a premium or discount to the government body, depending on whether the current Treasury borrowing rate at the time of early redemption is lower or higher than the stated interest rate of the early-redeemed SLGS security.

A. The total redemption value for bonds and notes can be determined by the following two steps:

First, accrued interest payable in accordance with § 344.5(a)(3)(i) is calculated using the following formula:

$$AI = \left[\frac{(s-r)}{s}\right] x \left(\frac{C}{2}\right)$$

(Equation 14)

and secondly, the redemption value per Section 344.5(a)(3)(ii) is calculated using the following equation:

$$RV = \frac{\left(\frac{C}{2}\right) + \left(\frac{C}{2}\right)a_{n\neg} + F(v^n)}{1 + \left(\frac{r}{s}\right) x \left(\frac{i}{2}\right)} - AI$$

(Equation 15)

where

RV=Redemption value

F=Face amount redeemed

AI=Accrued interest=[(s − r)/s]×(C/2)

r=Number of days from redemption date to next interest payment date

s=number of days in current semi-annual period

i=Treasury borrowing rate over the remaining term to maturity, based on semi-annual interest payments and expressed in decimals

C=the regular annual interest

n=number of remaining full semi-annual periods from the redemption date to the original maturity date, except that, if the redemption date is an interest payment date, n will be one less than the number of full semi-annual periods remaining to maturity

$v^n=1/(1+i/2)^n$=present value of 1 due at the end of n periods

$a_a=(1-v^n)/(i/2)=v + v^2 + v^3 + ... + v^n$ = present value of 1 per period for n periods

B. The application of this formula can be illustrated by the following examples:

(i) The first example is for a redemption at a premium.

(1) Assume that an $800,000 2-year note is issued on December 10, 1996, to mature on December 10, 1998. Interest is payable at a rate of 7% on June 10 and December 10.

(2) Assume that the note is redeemed on October 21, 1997, and that the current borrowing rate for Treasury at that time for the remaining period of 1 year and 50 days is 6.25%.

(3) The redemption value is computed as follows:

First, the accrued interest payable is calculated as:

$$AI = \left(\frac{183-50}{183}\right) x \left(\frac{\$56,000}{2}\right)$$

(Equation 16)

$$AI = \left(\frac{133}{183}\right) x \$28,000$$

(Equation 17)

$$AI = \$20,349.73$$

(Equation 18)

Then, the redemption value is calculated as:

$$RV = \frac{\left(\frac{\$56,000}{2}\right) + \left(\frac{\$56,000}{2}\right)a_{\overline{n}|} + \$800,000v^n}{1 + \left(\frac{50}{183}\right)\left(\frac{.0625}{2}\right)} - AI$$

(Equation 19)

$$RV = \frac{\left(\frac{\$56,000}{2}\right) + \left(\frac{\$56,000}{2}\right)\left[\frac{1 - \left(\frac{1}{\left(1+\frac{.0625}{2}\right)^2}\right)}{\left(\frac{.0625}{2}\right)}\right] + \$800,000\left[\frac{1}{\left(1 + \frac{.0625}{2}\right)^2}\right]}{1 + \left(\frac{50}{183}\right) x \left(\frac{.0625}{2}\right)} - AI$$

(Equation 20)

$$RV = \frac{\$28,000 + (\$28,000)(1.9100092) + (\$800,000)(0.94031221)}{1.008538251} - AI$$

(Equation 21)

$$RV = \frac{\$28,000 + \$53,480.26 + \$752,249.77}{1.008538251} - AI$$

(Equation 22)

$$RV = \frac{\$833,730.03}{1.008538251} - AI$$

(Equation 23)

$$RV = \$826,671.70 - \$20,349.73$$

(Equation 24)

$$RV = \$806,321.97$$

(Equation 25)

(ii) The second example is for a redemption at a discount and it uses the same assumptions as the first example, except the current Treasury borrowing cost is assumed to be 8.00%:

(1) Assume that an $800,000 2-year note is issued on December 10, 1996, to mature on December 10, 1998. Interest is payable at a rate of 7% on June 10 and December 10.

(2) Assume that the note is redeemed on October 21, 1997, and that the current borrowing rate for Treasury at that time for the remaining period of 1 year and 50 days is 8.00%.

(3) The redemption value is computed as follows. First, the accrued interest payable is caculated as:

$$AI = \left(\frac{183-50}{183}\right) x \left(\frac{\$56,000}{2}\right)$$

(Equation 26)

$$AI = \left(\frac{133}{183}\right) x \$28,000$$

(Equation 27)

$$AI = \$20,349.73$$

(Equation 28)

Then, the redemption value is calculated as:

$$RV = \frac{\left(\frac{\$56,000}{2}\right) + \left(\frac{\$56,000}{2}\right)a_{n\neg} + \$800,000v^{n}}{1 + \left(\frac{50}{183}\right)\left(\frac{.0800}{2}\right)} - AI$$

(Equation 29)

$$RV = \frac{\left(\frac{\$56,000}{2}\right) + \left(\frac{\$56,000}{2}\right)\left[\frac{1 - \left(\frac{1}{\left(1+\frac{.0800}{2}\right)^2}\right)}{\left(\frac{.0800}{2}\right)}\right] + \$800,000\left[\frac{1}{\left(1 + \frac{.0800}{2}\right)^2}\right]}{1 + \left(\frac{50}{183}\right) x \left(\frac{.0800}{2}\right)} - AI$$

(Equation 30)

$$RV = \frac{\$28,000 + (\$28,000)(1.8860947) + (\$800,000)(0.92455621)}{1.010928962} - AI$$

(Equation 31)

$$RV = \frac{\$28,000 + \$52,810.65 + \$739,644.97}{1.010928962} - AI$$

(Equation 32)

$$RV = \frac{\$820,455.62}{1.010928962} - AI$$

(Equation 33)

$$RV = \$811,585.83 - \$20,349.73$$

(Equation 34)

$$RV = \$791,236.10$$

(Equation 35)

C. The total redemption value for certificates can be determined by the following two steps:

First, accrued interest payable in accordance with Section 344.5(a)(3)(i) is calculated using the following formula:

$$AI = \left[\frac{(d-r)}{y}\right] x\ C$$

(Equation 36)

and secondly, the redemption value per Section 344.5(a)(3)(ii) is calculated using the following equation:

$$RV = \frac{\left(\frac{d}{y}\right) x\ (C) + F}{1 + \left(\frac{r}{y}\right) x\ (i)} - AI$$

(Equation 37)

where:

RV=Redemption value

F=Face amount redeemed

AI=Accrued interest = [(d-r)/y] x C

d=Number of days from original issue of the certificate to its maturity date

r=Number of days from redemption date to the certificate's maturity date

y=365, if the number of days in the year following issue of the certificate does not include a leap year day; 366, if the number of days following issue of the certificate does include a leap year day

i=Treasury borrowing rate over the remaining term to maturity, expressed in decimals

C=the regular annual interest

D. The application of this formula can be illustrated by the following examples.

(i) First, for a redemption at a premium:

(1) Assume that a $300,000 security is issued on December 5, 1996, to mature in 151 days on May 5, 1997. Interest at a rate of 5% is payable at maturity.

(2) Assume that the security is redeemed on April 9, 1997, and that the current borrowing rate for Treasury at that time for the remaining period of 26 days is 4.00%.

(3) The redemption value is computed as follows. First, the accrued interest payable is calculated as:

$$AI = \left(\frac{151-26}{365}\right) x\ \$15,000$$

(Equation 38)

$$AI = \left(\frac{125}{365}\right) x\ \$15,000$$

(Equation 39)

$$AI = \$5,136.99$$

(Equation 40)

Then, the redemption value is calculated as:

$$RV = \frac{\left(\frac{151}{365}\right) x \$15,000 + \$300,000}{1 + \left(\frac{26}{365}\right)(.0400)} - AI$$

(Equation 41)

$$RV = \frac{\$6,205.48 + \$300,000}{1.002849315} - AI$$

(Equation 42)

$$RV = \frac{\$306,205.48}{1.002849315} - AI$$

(Equation 43)

$$RV = \$305,335.48 - \$5,136.99$$

(Equation 44)

$$RV = \$300,198.49$$

(Equation 45)

(ii) Secondly, for a redemption at a discount:

(1) Assume that a $300,000 security is issued on December 5, 1996, to mature in 151 days on May 5, 1997. Interest at a rate of 5% is payable at maturity.

(2) Assume that the security is redeemed on April 9, 1997, and that the current borrowing rate for Treasury at that time for the remaining period of 26 days is 6.25%.

(3) The redemption value is computed as follows. First, the accrued interest payable is calculated as:

$$AI = \left(\frac{151-26}{365}\right) x \$15,000$$

(Equation 46)

$$AI = \left(\frac{125}{365}\right) x \$15,000$$

(Equation 47)

$$AI = \$5,136.99$$

(Equation 48)

Then, the redemption value is calculated as:

$$RV = \frac{\left(\frac{151}{365}\right) x \$15,000 + \$300,000}{1 + \left(\frac{26}{365}\right)(.0625)} - AI$$

(Equation 49)

$$RV = \frac{\$6,205.48 + \$300,000}{1.004452055} - AI$$

(Equation 50)

$$RV = \frac{\$306,205.48}{1.004452055} - AI$$

(Equation 51)

$$RV = \$304,848.28 - \$5,136.99$$

(Equation 52)

$$RV = \$299,711.29$$

(Equation 53)

[FR Doc. 96–27365 Filed 10–21–96; 4:58 pm]
BILLING CODE 4810–39–W

DEPARTMENT OF THE TREASURY

Fiscal Service

Bureau of the Public Debt

Demand Deposit Securities of the State and Local Government Series; Average Marginal Tax Rate and Treasury Administrative Costs

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of estimated average marginal tax rate and Treasury administrative costs for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series.

SUMMARY: This notice is being published to provide the information necessary to apply the interest rate formula for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series (31 CFR Part 344, Subpart C). The final regulations governing securities of the State and Local Government Series which appear in the current issue of the Federal Register, in setting out the formula, make provision for the simultaneous publication of this notice (31 CFR 344.5). The factor necessary to convert the interest rate to a tax-exempt equivalent (1—the estimated average marginal tax rate of purchasers of tax-exempt bonds) is 1-.29 or .71. The Treasury administrative cost is five basis points.

EFFECTIVE DATE: October 28, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Pyatt, Director, or Howard Stevens, Supervisory Program Analyst, Division of Special Investments, Parkersburg, WV, at (304) 480–7752.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under the authority of Chapter 3102 of Title 31, United States Code, and pursuant to the Tax Reform Act of 1986, Pub.L. 99–514, 1301(b), offers a demand deposit United States Treasury Certificate of Indebtedness—State and Local Government Series. This security is a one-day certificate of indebtedness, issued in an amount of $1,000, or any higher dollar amount, with interest accrued and added to the principal daily. In the final regulations published simultaneously with this notice, provision is made to provide by notice the information necessary to apply the interest rate formula to the new demand deposit certificate, i.e., the average yield for three-month Treasury bills at the most recent auction, multiplied by one minus the estimated average marginal tax rate (1–MTR) of purchasers of tax-exempt bonds, less the Treasury administrative cost. The factor ''1–MTR'' is .71. The Treasury administrative cost is 5 basis points. Both the ''1–MTR'' and the Treasury administrative cost are subject to redetermination by the Department of the Treasury. Any future changes will be published by notice in the Federal Register.

Dated: October 21, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 96–27364 Filed 10–21–96; 4:58 pm]

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federal register

Monday
October 28, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 291

Disposition of HUD-Acquired Single Family Property; Streamlining Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 291

[Docket No. FR–4116–F–01]

RIN 2502–AG81

Disposition of HUD-Acquired Single Family Property; Streamlining Final Rule

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the disposition of HUD-acquired single family property. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline these regulations by eliminating provisions that are redundant or are otherwise unnecessary. This final rule will make the single family property disposition program regulations clearer and more concise.

EFFECTIVE DATE: November 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ann M. Sudduth, Director, Department of Housing and Urban Development, Room 9170, 451 Seventh Street, SW, Washington, DC 20410; telephone number (202) 708–0740 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Regulatory Reinvention

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the disposition of HUD-acquired single family properties in 24 CFR part 291 can be improved and streamlined by eliminating unnecessary provisions.

According to the President's regulatory reinvention initiatives, the Code of Federal Regulations (CFR) should contain only binding regulatory requirements. However, several sections in the single family property disposition regulations contain nonbinding guidance, information, or explanations. HUD will more appropriately provide this information through handbook guidance or other materials. By removing provisions from the CFR that are not binding regulatory requirements, HUD will clarify to the reader which provisions are actually binding requirements. Furthermore, HUD has determined that some of the binding requirements in these regulations are no longer necessary. Therefore, through this final rule, HUD's regulations for the disposition of single family property will contain only those regulatory requirements that are necessary for the proper administration of the disposition program.

Specifically, this rule accomplishes the following:

1. This rule streamlines § 291.1 by revising paragraph (b) regarding nondiscrimination requirements. The nondiscrimination requirements in paragraph (b) are already contained in 24 CFR part 5, which was established by a final rule published on February 9, 1996 (61 FR 5198). This rule also eliminates paragraph (c), which was informational and nonbinding.

2. This rule consolidates most of the definitions throughout part 291 into § 291.5 to make them easier to find. This rule removes the definition for the term ''revitalization area.'' This definition is unnecessary because, due to the other streamlining efforts in this rule, this term no longer appears in part 291. This rule also streamlines the definition of ''tribe'' by removing language that simply repeats a statutory provision.

3. This rule streamlines § 291.100 regarding HUD's general disposition policies by removing unnecessary cross-references and nonbinding information. It also revises paragraph (d)(2) to provide that when HUD decides to take back a purchase money mortgage (PMM) on a property, the mortgage will be available in an amount determined by the Secretary. This revision will give HUD more flexibility to offer the mortgage at a fair price.

4. This rule streamlines § 291.105 regarding the competitive sales procedure by removing language that is unnecessary or redundant. This rule also revises paragraph (f) by clarifying HUD's procedures regarding properties subject to an extended listing period. This clarification will assist the public by eliminating confusion regarding the procedures.

5. This rule streamlines § 291.110 regarding other sales procedures. This rule removes some of the specific information regarding other sales procedures that is nonbinding and that HUD could more appropriately provide through other means. This rule also revises this section slightly to clarify that a property will be sold to the first eligible purchaser submitting an acceptable contract. (See § 291.110(a)(2)(i) of this final rule. The regulations previously provided that properties will be sold on a ''first come-first served basis.'')

6. This rule removes §§ 291.115 through 291.145. HUD has determined that the information and requirements in these sections no longer need to appear in the CFR.

7. This rule streamlines subpart C of part 291 regarding the rental of acquired property. This rule will provide HUD's general policy in § 291.200, but it will remove the information and requirements that no longer need to appear in the CFR.

8. This rule revises § 291.400 regarding the lease and sale of HUD-acquired property for the homeless. This rule removes language that is unnecessary or redundant. This rule also adds a new paragraph regarding applicant preapproval, which was previously located in § 291.410. It is necessary to retain this requirement to inform the public of the initial procedures for acquiring properties for the homeless.

9. This rule removes § 291.405. The definitions in this section will now appear in § 291.5.

10. This rule also removes § 291.410. HUD has determined that, with the exception of the requirement for applicant preapproval, which was moved to § 291.400, the information and requirements in § 291.410 no longer need to appear in the CFR.

11. This rule streamlines § 291.415 by removing paragraph (d) regarding property operating costs and insurance. The important requirements in that paragraph are disclosed in and enforceable through the terms of the lease, and it is unnecessary to retain them in the CFR.

12. This rule removes §§ 291.420 and 291.425. HUD has determined that the information and requirements in these sections no longer need to appear in the CFR.

13. This rule does not amend § 291.430 regarding the elimination of lead-based paint hazards.

14. This rule revises § 291.435 by removing paragraph (c), which provided that the requirements for intergovernmental review ''are not applicable to applications under this subpart.'' It is unnecessary to maintain this information in the CFR.

This rule will result in the elimination of approximately nine pages of unnecessary regulations.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for

effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and clarifies existing procedures; it does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. As HUD developed the regulations in part 291, Findings of No Significant Impact with respect to the environment were made in accordance with regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

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, thereby certifying that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations. It will have no adverse or disproportionate economic impact on small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; approved March 22, 1995) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, 24 CFR part 291, subparts A, B, C, and E are revised as set forth below:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. Subparts A, B, and C are revised to read as follows:

Subpart A—General Provisions

Sec.
291.1 Purpose and scope.
291.5 Definitions.

Subpart B—Disposition by Sale

291.100 General policy.
291.105 Competitive sales procedures.
291.110 Other sales procedures.
291.150 Sanctions against fradulent purchase.

Subpart C—Rental of Acquired Property

291.200 General policy.

* * * * *

Subpart A—General Provisions

§ 291.1 Purpose and scope.

(a) *Purpose.* (1) This part governs the disposition of one-to-four family properties that are acquired by HUD or are otherwise in HUD's custody. Detailed policies and procedures that must be followed in specific areas are issued by each HUD field office.

(2) The purpose of the property disposition program is to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

(b) *Nondiscrimination policy.* The requirements set forth in 24 CFR parts 5 and 110 apply to the administration of any activity under this part.

§ 291.5 Definitions.

The terms ''*HUD*'' and ''*Secretary*'' are defined in 24 CFR part 5.

Applicant means a State, metropolitan city, urban county, governmental entity, tribe, or private nonprofit organization that submits a written expression of interest in eligible properties under subpart E of this part. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies or state housing finance agencies). In the case of applicants leasing properties while their applications for Supportive Housing assistance are pending, ''*applicant*'' is defined in 24 CFR part 583.

Closing agent means a qualified firm or person under contract to HUD to administer closings involving the sale of HUD-acquired single family properties.

Competitive sale means a sale through a sealed bid process (or other bid process specifically authorized by the Secretary) in competition with other bidders in which properties have been publicly advertised to all prospective purchasers for bids.

Direct sale means a sale to a selected purchaser to the exclusion of all others without resorting to advertising for bids. Such a sale is available only to approved applicants.

Disposition means the sale, or lease with option to purchase, of eligible properties for use by the homeless.

Eligible properties means all vacant single family properties acquired by HUD under the Mutual Mortgage Insurance Fund, the Special Risk Insurance Fund, the General Insurance Fund, or other housing programs, except properties committed to other HUD programs.

Homeless means:

(1) Individuals or families who lack the resources to obtain housing, whose annual income is not in excess of 50 percent of the median income for the area, as determined by HUD, and who:

(i) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(ii) Have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing, but excluding prisons or other detention facilities); or

(iii) Are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement (except that persons facing eviction on the basis of criminal conduct such as drug trafficking and violations of handgun prohibitions shall not be considered homeless for purposes of this definition); or

(2) Handicapped persons who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks necessary to obtain access to housing.

Insured mortgage means a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*).

Investor purchaser means a purchaser who does not intend to use the property as his or her principal residence.

Lessee means the applicant, approved by HUD as financially responsible, that executes a lease agreement with HUD for an eligible property.

Occupant, for purposes of the lease and sale of HUD-acquired single family properties for the homeless, means a homeless individual or family that occupies an eligible property after that property has been leased to an applicant.

Owner-occupant purchaser means a purchaser who intends to use the property as his or her principal residence; a State, governmental entity, tribe, or agency thereof; or a private nonprofit organization as defined in this section. Governmental entities include those with general governmental powers (e.g., a city or county), as well as those with limited or special powers (e.g., public housing agencies).

Preapproved means a commitment has been obtained from a recognized mortgage lender for mortgage financing in a specified dollar amount sufficient to purchase the property.

Private nonprofit organization means a secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2)(i) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles; or

(ii) Designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles;

(3) Practice nondiscrimination in the provision of assistance in accordance with the authorities described in § 291.435(a); and

(4) Have nonprofit status as demonstrated by approval under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), or demonstrate that an application for such status is currently pending approval.

Purchase money mortgage, or PMM means a note secured by a mortgage or trust deed given by a buyer, as mortgagor, to the seller, as mortgagee, as part of the purchase price of the real estate.

Single family property means a property designed for use by one to four families.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Tribe has the meaning provided for the term ''*Indian tribe*'' in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Subpart B—Disposition by Sale

§ 291.100 General policy.

(a) *Qualified purchaser.* (1) Anyone, regardless of race, color, religion, sex, national origin, familial status, age, or disability may offer to buy a HUD-owned property, except that:

(i) No member of or delegate to Congress is eligible to buy or benefit from a purchase of a HUD-owned property; and

(ii) No nonoccupant mortgagor (whether an original mortgagor, assumptor, or a person who purchased ''subject to'') of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage, is eligible to repurchase the same property.

(2) HUD will not offer former mortgagors in occupancy who have defaulted on the mortgage the right of first refusal to repurchase the same property.

(3) HUD will offer tenants accepted under the occupied conveyance procedures outlined in 24 CFR 203.670 through 203.685 the right of first refusal to purchase the property only if:

(i) The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to HUD to be offered the right of first refusal; or

(ii) State or local law requires that tenants be offered the right of first refusal.

(b) *List price.* The list price, or ''asking price,'' assigned to the property is based upon an appraisal conducted by an independent real estate appraiser using nationally recognized industry standards for the appraisal of residential property.

(c) *Method of sale.* (1) HUD sells properties on an ''as-is'' basis, without repairs or warranties. The principal method of sale is the competitive sales procedure. Where appropriate, the Secretary may use another sales procedure, as described in § 291.110.

(2) Properties may be sold under the following programs:

(i) *Insured.* A property that HUD believes meets the intent of the Minimum Property Standards (MPS) for existing dwellings (Requirements for Existing Housing, One to Four Family Living Units, HUD Handbook 4905.1) will be offered for sale in ''as-is'' condition with FHA mortgage insurance available.

(ii) *Insured with repair escrow.* A property that requires no more than $5,000 for repairs to meet the intent of the MPS, as determined by the Secretary, will be offered for sale in ''as-is'' condition with FHA mortgage insurance available, provided the mortgagor establishes a cash escrow to ensure the completion of the required repairs.

(iii) *Uninsured.* A property that fails to qualify under either paragraph (c)(2)(i) or (ii) of this section will be offered for sale either in ''as-is'' condition without mortgage insurance available, or under section 203(k) of the National Housing Act (12 U.S.C. 1709(k)).

(d) *Financing.* (1) Except as provided in paragraph (d)(2) of this section, the purchaser is entirely responsible for obtaining financing for purchasing a property.

(2) HUD, in its sole discretion, may take back purchase money mortgages (PMMs) on property purchased by governmental entities or private nonprofit organizations who buy property for ultimate resale to owner-occupant purchasers with incomes at or below 115 percent of the area median income. When offered by HUD, a PMM will be available in an amount determined by the Secretary to be appropriate, at market rate interest, for a period not to exceed five years. Mortgagors must meet FHA mortgage credit standards.

(e) *Environmental requirements and standards.* Sales under this part are subject to the environmental requirements and standards described in 24 CFR part 50, as applicable.

(f) *Flood insurance requirements.* Flood insurance must be obtained and maintained as provided in 24 CFR 203.16a.

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 24 CFR part 200, subpart O.

(h) *Open listings.* Except as provided in paragraph (i) of this section, properties are sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with HUD requirements may participate in the sales program. Purchasers participating in the competitive sales program, except government entities and nonprofit organizations, must submit bids through a participating broker.

(i) *Asset management and listing contracts.* (1) A field office may invite firms experienced in property management to compete for contracts that provide for an exclusive right to manage and list specified properties in a given area.

(2) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. The purchaser's broker must submit the bid to HUD through the exclusive broker.

§ 291.105 Competitive sales procedure.

(a) *General.* (1) Properties are sold to the general public on a competitive bid basis through local real estate brokers, except as provided in § 291.100(h).

(2) For properties being offered with mortgage insurance, priority will be given to owner-occupant purchasers, as defined in § 291.5, for a period of up to 30 days, as determined by HUD. For properties offered without mortgage insurance, priority will be given to governmental entities and nonprofit organizations prior to other owner-occupant purchasers.

(b) *Net offer.* The net offer is calculated by subtracting from the bid price the dollar amounts for the following:

(1) If requested by the purchaser in the bid, HUD will pay all or a portion of the financing and loan closing costs and the broker's sales commission, not to exceed the percentage of the purchase price determined appropriate by the Secretary for the area. In no event will the amount for broker's sales commission exceed 6 percent of the purchase price, except for cash bonuses offered to brokers by HUD for the sale of hard-to-sell properties.

(2) In the case of properties sold under the insured sales with repair escrow program, the repair escrow amount is also deducted from the bid to determine the net offer.

(c) *Acceptable bid.* HUD will accept the bid producing the greatest net return to HUD and otherwise meeting the terms of HUD's offering of the property, with priority given to owner-occupant purchasers as described in paragraph (a)(2) of this section. The greatest net return is calculated based on the net offer, as described in paragraph (b) of this section.

(d) *Bid period.* After properties are initially advertised, bids are accepted for a 10-day period, with all offers received during the 10 days considered to have been received simultaneously, except as described in paragraph (e) of this section. Offers received on a property before the 10-day bidding period begins will be returned. Offers received after the 10-day period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the 10-day period.

(e) *Full price offers.* HUD field offices that operate under a ''full price offer'' program open offers at specified times during the 10-day bidding period. If an offer for the full list price and otherwise meeting the terms of the offering is received, it will be accepted at the time of the opening and the 10-day bid period cancelled.

(f) *Extended listing period.* Properties not sold at the bid opening will remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled daily bid opening. Properties that fail to sell within 30 days after being offered for competitive bidding will be reanalyzed and relisted. If a property's price or terms are changed, it will be subject to another competitive bidding period as described in paragraph (d) of this section.

(g) *Bid requirements.* (1) All bids submitted, whether during the 10-day bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form prescribed by HUD, signed by both the submitting real estate broker and the prospective purchaser. If the purchase is to be an insured sale, a field office may also require that supporting exhibits for mortgage credit analysis accompany the initial submission of the bid.

(2) Unless the Secretary specifically authorizes another bid process, bids must be placed in sealed envelopes marked with the property number, address, and return address of the broker. All bids not indicating that the purchaser will occupy the property will be considered as investor offers.

(3) Noncomplying bids will be returned to the broker with an explanation for the noncompliance decision and information about whether the property is still available.

(h) *Earnest money deposits.* (1) The amount of earnest money deposit required for a property with a sales price of $50,000 or less is $500, except that for vacant lots the amount is 50 percent of the list price. For a property with a sales price greater than $50,000, the amount of earnest money deposit required in the area is set by the field office, in an amount not less than $500 or more than $2,000. Information on the amount of the required earnest money deposit is available from the field office or participating real estate brokers.

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. If a bid is accepted by HUD, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned. Earnest money deposits are subject to total or partial forfeiture for failure to close a sale.

(i) *Multiple bids.* Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective purchaser. If a purchaser submits multiple bids on the same property, only the bid producing the highest net return to HUD will be considered. If a prospective owner-occupant purchaser submits a bid on more than one property, the first of those bids that produces the greatest net return to HUD will be accepted and all other bids from that purchaser will be eliminated from

consideration. However, if the prospective owner-occupant purchaser has submitted the only acceptable bid on another property, then that bid must be accepted and all other bids from that purchaser on any other properties will be eliminated from consideration.

(j) *Opening the bids.* Unless the Secretary specifically authorizes another bid process:

(1) The bids will be opened publicly at a time and place designated by the HUD field office.

(2) Each bid will be announced when opened, and acknowledgment made of the offer that produces the greatest net return to HUD. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Acceptance of a bid is final and effective only upon HUD's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent.

(k) *Counteroffers.* If all bids received on a property are unacceptable, a field office may notify all bidders or their brokers that HUD will accept an offer equalling a predetermined net acceptable price. Bidders must submit an acceptable offer before the established bid cut-off period, to be determined by the field office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, award will be determined by drawing lots.

(Approved by the Office of Management and Budget under OMB control numbers 2502–0306, 2502–0059, and 2502–0429)

§ 291.110 Other sales procedures.

(a) *Direct sales of properties without mortgage insurance to governmental entities and private nonprofit organizations.* (1) State and local governments, public agencies, and qualified private nonprofit organizations that have been preapproved to participate by HUD, according to standards determined by the Secretary, may purchase properties directly from HUD at a discount off the list price determined by the Secretary to be appropriate, but not less than 10 percent, for use in HUD and local housing or homeless programs.

(2)(i) Purchasers under paragraph (a)(1) of this section must designate geographical areas of interest, by ZIP code, to appropriate HUD field offices. Upon request, for those properties not eligible for mortgage insurance, and before they are publicly listed, field offices will notify governmental entities and nonprofit organizations in writing when eligible properties become available in the areas designated by them. Field offices will coordinate the dissemination of the information to ensure that if more than one purchaser designates a specific area, those purchasers receive the list of properties at the same time, based on intervals agreed upon between HUD and the purchasers. A property in this section will be sold to the first eligible purchaser submitting an acceptable contract.

(ii) Purchasers under paragraph (a)(1) of this section must notify HUD of preliminary interest in specific properties within five days of the notification of available properties (if notification is by mail, the five days will begin to run five days after mailing). Those properties in which purchasers express an interest will be held off the market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. HUD may limit the number of properties held off the market for a purchaser at any one time, based upon the purchaser's financial capacity as determined by HUD and upon past performance in HUD programs. At the end of the 10-day consideration and inspection period, properties in which no governmental entity or nonprofit organization has expressed a specific intent to purchase will be offered for sale under the competitive bid process. Properties in which a governmental entity or nonprofit organization expressed an intent to purchase, during the 10-day period, will continue to be held off the market pending receipt of the sales contract. If a sales contract is not received within a time period of up to 10 days, as determined by HUD, following expiration of the 10-day consideration and inspection period, and no other governmental entity or nonprofit organization has expressed an interest, then the property will be offered for sale under the competitive bid process.

(3) In order to ensure that properties purchased at a discount are being utilized for expanding affordable housing opportunities, HUD may require, as appropriate, periodic, limited information regarding the purchase and resale of such properties, and certain restrictions on the resale of such properties.

(b) *Sales to other individuals or entities.* HUD may also seek to dispose of properties through other methods, such as direct sales to displaced persons, sales of razed lots, bulk sales, auctions, or direct sales to other individuals or entities that do not meet any of the categories specified in this section, if a finding is made by the Assistant Secretary for Housing-Federal Housing Commissioner or his or her designee in writing that such sales would further the goals of the National Housing Act (12 U.S.C. 1701 et seq.) and would be in the best interests of the Secretary. These sales will be upon such terms and conditions as the Secretary may prescribe.

(Approved by the Office of Management and Budget under OMB control number 2502–0306)

§ 291.150 Sanctions against fraudulent purchase.

False certification by a purchaser concerning occupancy of single family properties financed by an insured mortgage is a violation of 18 U.S.C. 1001, which may result in the required prepayment of the mortgage in the amount of the difference between the downpayment made and the downpayment required if the loan had been processed as an investor purchaser loan, or in criminal prosecution.

Subpart C—Rental of Acquired Property

§ 291.200 General policy.

HUD will lease acquired property to comply with other designated HUD programs, or when the Secretary determines that it is in the interest of HUD. Leases may include an option to purchase in appropriate circumstances.

* * * * *

3. Subpart E is amended by revising §§ 291.400, 291.415, 291.435, and 291.440 and by removing §§ 291.405, 291.410, 291.420, and 291.425 to read as follows:

Subpart E—Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

§ 291.400 Purpose and scope.

(a) *Purpose.* HUD seeks to assist individuals and families who are homeless by providing them with transitional housing and appropriate supportive services with the goal of helping them move to independent living. Therefore, HUD will make available, to applicants approved by HUD, certain HUD-acquired single family properties for use by the homeless.

(b) *Applicant preapproval.* Before a field office may notify an applicant of eligible properties, the applicant must be preapproved by HUD, according to procedures available from the field office.

(c) *Property available for lease with option to purchase.* HUD will make available up to 10 percent of its total inventory of properties, before or after they are listed for sale to the public.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent.

(f) *Concentration of properties.* To the extent practicable and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this subpart.

(g) *Failure to comply with requirements.* Failure to comply with this subpart, or a lease issued under this subpart, may result in termination from the program.

(Approved by the Office of Management and Budget under OMB control number 2502–0412)

§ 291.415 Lease with option to purchase properties for use by the homeless.

(a) *Certification.* Eligible properties are available for lease to applicants, approved by HUD, that certify that the property will be utilized only for the purpose of providing transitional housing for the homeless during the lease term, and that the intended use of the property will be consistent with all local laws and regulations. The lease agreement will be in a form prescribed by the Secretary. Lessees must execute a sublease with occupants in a form prescribed by the Secretary limiting an occupant's tenancy to no longer than two years.

(b) *Term of lease.* (1) A lease of an eligible property may be negotiated for such time as the lessee requires, not to exceed one year. Leases are renewable, at the option of the lessee and with the approval of HUD, at the end of the first lease term for up to four additional one-year terms, on a year-to-year basis, provided the lessee has met the requirements under this program.

(2) Approvals for lease renewals will be denied if HUD determines that the lessee has not complied with the requirements of this part of the lease.

(3) A property will not be leased to a lessee for a period longer than five years. At the end of the five-year period, if the lessee has not exercised the option to purchase, HUD will notify the lessee to vacate the property and, if necessary, will take appropriate action under the eviction laws of the jurisdiction in which the property is located. All property returned to HUD must be vacant, and will be placed on the market for sale to the general public.

(4) Within 30 days of leasing a property from HUD or within 30 days after a property is vacated, a lessee must sublease the property to the homeless, unless a longer period is approved by HUD.

(c) *Rent.* (1) The lessee must pay HUD a nominal rent of $1 for each one-year lease period.

(2) A lessee may charge rent, including utilities, to an occupant at a rate appropriate to the financial means of the occupant. Unless HUD approves after consideration of such factors as the cost of operating housing in the area and the amount of the lessee's contributions to the program, such rent may not exceed the highest of:

(i) Thirty percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(ii) Ten percent of the family's monthly income; or

(iii) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(3) In no event may the rent charged an occupant exceed the occupant's pro rata share of the lessee's costs of operating the property.

(d) *Damage to leased properties.* Any damage to leased property caused by the intentional or negligent acts of the lessee or occupants must be repaired by the lessee at its own expense. If the lessee does not make the necessary repairs within a reasonable time after the damage occurs, HUD may, at its option, make the repairs and charge the cost to the lessee. Failure by the lessee to make the necessary repairs or to reimburse HUD for the cost of repairs will constitute grounds for termination of the lease and may result in termination from the program.

(e) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. If the lessee does not agree to such conditions, the lessee must purchase the properties at the higher of the fair market value at the time of the initiation of the lease or at the time of the sale, less 10 percent. Any repairs to or rehabilitation of a property done by a lessee during the lease term will not be reflected in the purchase price.

(2) Sales of leased properties will be on as-is, all-cash basis. HUD will not pay a fee for a selling broker. HUD will pay the closing agent's fee. The purchaser must pay all other closing costs.

§ 291.435 Applicability of other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following Federal requirements apply to lessees and purchasers under this subpart:

(a) *Nondiscrimination and equal opportunity.* (1) The nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 are modified as follows:

(i) As applicable, lessees and purchasers must also comply with the Americans With Disabilities Act (42 U.S.C. 12131) and implementing regulations in 28 CFR parts 35 and 36.

(ii) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and Executive Order 11246 (30 FR 12319, 12935, 3 CFR, 1946–1965 Comp., p. 339; Executive Order 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616); Executive Order 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; and Executive Order 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393) do not apply to this subpart.

(2) Lessees or purchasers that intend to serve designated populations of the homeless must comply, within the designated population, with the requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and disability.

(3) If the procedures that the lessee or purchaser intends to use to make known the availability of housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the availability of the housing.

(4) The lessee or purchaser must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(b) *Conflicts of interest.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the lessee or purchaser of property under this subpart, or who is in a position to participate in a decisionmaking process or gain inside information with regard to the lease or purchase of the property, may obtain a personal or financial interest or benefit from the lease or purchase of the property, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

§ 291.440 Recordkeeping requirements.

Each lessee must establish and maintain sufficient records to enable the Secretary to determine whether the requirements of this subpart have been met. This includes, where available, racial, ethnic, gender, and disability status data on the applicants for, and beneficiaries of, this homeless initiative.

(Approved by the Office of Management and Budget under OMB control number 2502–0412)

Date: October 7, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–27543 Filed 10–25–96; 8:45 am]

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October 28, 1996

Part IV

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions: Treatability Variance for CITGO Petroleum Refinery, Lake Charles, LA; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–5642–2]

Land Disposal Restrictions: Treatability Variance for CITGO Petroleum Refinery, Lake Charles, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a site-specific variance from the Land Disposal Restrictions (LDR) treatment standards for two hazardous petroleum refinery wastes (EPA Hazardous Waste Codes F037 and F038). The variance applies to F037 and F038 nonwastewaters that are removed from a 26 acre surface impoundment (the Surge Pond) located at the CITGO Corporation petroleum refinery outside Lake Charles, Louisiana. EPA is taking this action because the LDR treatment standards that otherwise would apply are based on the performance of technologies that are not appropriate for these wastes at this site. EPA believes that requiring use of the technologies that were the basis of the treatment standards would likely result in net environmental detriment, namely, impeding or preventing the assured remediation of the Surge Pond, including removal and substantial treatment of all remaining Surge Pond sludge. Granting this variance will enable CITGO to complete the removal, treatment, and disposal of the Surge Pond sludge, provided they comply with the alternative treatment standards specified in this rule. EPA has found that removing, treating, and disposing of the sludge in a secure facility is more protective to human health and the environment than the likely alternative, leaving the untreated hazardous waste sludge in place.

EFFECTIVE DATE: This final rule is effective on October 22, 1996.

ADDRESSES: The official record for this rulemaking is identified by RCRA Docket Number F–96–TVLF–FFFF and is located at 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia (the ''Crystal Gateway'' building). The RCRA Docket is open from 9:00 am to 4:00 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 412–9810 locally; TDD (800) 553–7672 or (703) 412–3323. For information on specific aspects of this document, contact Shaun McGarvey, Waste Treatment Branch (Mailcode 5302W), Hazardous Waste Minimization and Management Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, at (703) 308–8603.

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I. Background

A. Authority

Under RCRA section 3004(m), EPA is required, as a prerequisite to allowing land disposal of hazardous waste, to establish ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' To date, EPA has implemented this requirement by developing technology-based treatment standards, although other approaches are also permissible. HWTC v. EPA, 886 F.2d 355, (D.C. Cir. 1989). The Agency, however, recognizes that there are wastes that cannot or should not be treated to the levels specified in the rules, because the wastes are physically or chemically different from the wastes the Agency evaluated when establishing the treatment standard, or because the treatment technology is inappropriate for the waste. See 51 FR at 40605–40606 (Nov. 7, 1986). For such wastes, EPA established treatability variance procedures that may be used to establish alternative treatment standards on a case-by-case basis. 40 CFR 268.44.

The requirements for a treatability variance are found at 40 CFR 268.44(a), which states:

> Where the treatment standard is expressed as a concentration in a waste or waste extract and a waste cannot be treated to the specified level, or where the treatment technology is not appropriate to the waste, the generator or treatment facility may petition the Administrator for a variance from the treatment standard. The petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard, the waste cannot be treated to specified levels or by the specified methods.

EPA uses this standard to approve site-specific variances and variances that have more general applicability. See § 268.44(h) and 53 FR at 31199–31200 (August 18, 1988). Except for their potential applicability, the main difference between site-specific and general variances is that EPA may permissibly use procedures less formal than Administrative Procedure Act notice and comment rulemaking when processing site-specific treatability variance applications (see 53 FR at 31199–31200). However, because CITGO's application raises issues that may be of national interest (notwithstanding applicability of the rule to a particular facility), EPA used APA notice and comment procedures to process CITGO's application, even though the variance will apply only to specific wastes generated by remediation of the Surge Pond at CITGO's Lake Charles, Louisiana facility. Thus, today's action can be said to be pursuant to both §§ 268.44(a) and (h).

For a more thorough discussion of the conditions which justify approving a treatability variance and the supporting information the petitioner is required to submit, please refer to the November 7, 1986 Federal Register (51 FR at 40605–40606), as well as the September 19, 1994 Federal Register (59 FR at 48023).

B. Site Description

The surface impoundment containing the waste addressed by this variance is located at CITGO Corporation's Lake Charles Refinery, 4401 Louisiana Highway 108 in Calcasieu County in the southwest corner of Louisiana. The

surface impoundment in question, referred to as the ''Surge Pond'' in CITGO's application, is situated immediately adjacent to the west bank of the Calcasieu River, approximately 10 miles southwest of Lake Charles and 15 miles north of the Sabine National Wildlife Refuge. The Surge Pond has a surface area of twenty six (26) acres. Much of the pond is 15 to 20 feet deep; the deepest part is about 40 feet deep. The water surface elevation of the pond is six feet above sea level; the water layer is about 15 feet deep.

Wastewater from the Surge Pond discharges into an old on-site wastewater treatment system. This system consists of an earthen equalization basin, followed by dissolved air flotation (DAF) tanks, a settling pond, and a polishing pond. It discharges into the Calcasieu river at an NPDES regulated outfall (Permit Number LA0005941). The bottom of the pond is filled with sludge which has been accumulating since the 1940's. The Sludge remaining in the Surge Pond is the subject of this variance. (CITGO's application for a treatability variance only includes sludge from the Surge Pond; it does not include any sludge generated by the rest of the old wastewater treatment system, including sludge generated by any remediation of the system.)

CITGO has been operating a new on-site wastewater treatment system since May 13, 1994. This system now receives process wastewater and storm water from the site. The new system consists primarily of above ground tanks with floating roofs. Air emissions from the tanks are routed to a vapor control system. The new wastewater treatment system flows from the API separators to an equalization tank, to a DAF unit, to aerated activated sludge tanks, to a clarifier. Clarifier effluent is discharged to the settling pond of the old wastewater treatment system and eventually through the NPDES regulated outfall to the Calcasieu River.

C. History of Surge Pond Remediation

The CITGO Surge Pond is a hazardous waste surface impoundment and, thus, is subject to requirements for closure and corrective action. See, e.g., 40 CFR 264.101; 40 CFR 264.110. In early 1993, CITGO conducted feasibility studies to compare and evaluate their options for closing the Surge Pond. They decided to pursue an option that involved removal of sludge from the Surge Pond followed by substantial treatment, oil recovery, and secure disposal at an off-site Subtitle C facility. This remediation strategy was approved by the State of Louisiana Department of Environmental Quality in December 1993. Following state approval, CITGO designed, constructed and began operating an on-site treatment system for treatment of Surge Pond sludge.

At the time CITGO chose the sludge removal and treatment option there was a national capacity variance for F037 and F038 nonwastewaters which extended the effective date of the applicable LDR treatment standards. CITGO planned to complete removal, treatment, and disposal of all the Surge Pond sludge before the national capacity variance expired; however, they were unable to meet this deadline due to unforeseen contractor delays. When the national capacity variance expired (June 30, 1994), remediation was stopped because the treatment system could not meet the treatment standards for all of the regulated constituents in Surge Pond sludge, and CITGO applied for a treatability variance.

For a more detailed discussion of the regulatory and remediation history at the CITGO Surge Pond see the preamble to the proposed rule at 59 FR 44686 (August 20, 1994) and CITGO's application for a site-specific treatability variance (available in the docket for today's rulemaking).

D. Waste Description

The Surge Pond received untreated petroleum refining process water and storm water runoff from the site for most of the site's history. Under normal operation, the Surge Pond received sanitary oxidation pond effluent, ballast water, storm water runoff from the refinery complex, CPI separator effluent, and, potentially, controlled cooling tower blowdown. The sludge at the bottom of the Surge Pond, therefore, is a primary sludge generated by the settling of petroleum refining wastewater and meets the definition of RCRA Hazardous Waste Codes F037 and F038. Sampling and analysis of the sludge was performed in 1993 as part of a feasibility study conducted by CITGO for the purpose of evaluating pond closure options, and again in February and March 1994 for this treatability variance petition. Concentrations of hazardous constituents in the untreated sludge are summarized in Appendix 1.

This application involves approximately 375,000 tons of sludge which remain in the surface impoundment. CITGO and its contractors have in fact removed and treated over 500,000 tons of sludge up to June 30, 1994—the time the land disposal prohibition for F037 and F038 wastes took effect.

E. Description of Proposed Treatment

Upon promulgation of this variance, CITGO will use an on-site treatment system to recover oil from, and substantially reduce the toxicity and mobility of, regulated hazardous constituents in the Surge Pond sludge. This treatment system will consist of air sparging in tanks to remove volatile organic constituents, followed by sludge dewatering. Dewatered sludge will be mixed with lime or flyash to stabilize metals and provide structural integrity. Stabilized sludge will be sent for land disposal at Chemical Waste Management's Subtitle C landfill in Carlyss, Louisiana. The liquid phase from the dewatering units will be routed to tanks functioning as oil-water separators for recovery of oil. The aqueous discharge (wastewater) from the separators will be discharged back into the Surge Pond and from there through the old wastewater treatment to the NPDES regulated outfall at the Calcasieu river.

Air emissions from the treatment system will be routed to a vapor control system, permitted by the State of Louisiana Department of Environmental Quality, for removal of hydrogen sulfide and destruction of the volatile organics. In addition the sludge treatment system will have to be operated in accordance with air emission standards specified by:

(1) 40 CFR Part 61—National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart FF: National Emission Standard for Benzene Waste Operations, § 61.348 Standards: Treatment Processes. (This regulation requires removal of benzene from the waste stream to a level less than 10 parts per million by weight (ppmw) on a flow-weighted annual average basis, and gives specifications for the design and operation of the vapor control system);

(2) 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (assuming that the volatile organic concentration at the point of waste origination—that is, in the impoundment—exceeds the trigger level specified in those rules, which appears to be the case). (The Subpart CC rules require that tanks storing or treating hazardous wastes to which the rule applies be equipped with covers and control devices to capture and destroy volatile emissions or otherwise to control emissions from the tanks to protective levels. See 40 CFR 264.1084

and 264.1091; and 265.1085 and 265.1091); and,

(3) Any additional requirements specified by the Louisiana Department of Environmental Quality.

EPA believes that compliance with the Benzene NESHAP and (if applicable) the subpart CC rules will ensure that the treatment unit will operate in a protective manner and will not serve as a conduit for cross-media transfer of volatile hazardous constituents (or, for that matter, volatile constituents in general). Cf. *Chemical Waste Management* v. *EPA*, 976 F. 2d at 17, 18.

Before the national capacity variance expired, CITGO treated approximately 500,000 tons of Surge Pond sludge, using the treatment strategy described above. Performance data from this treatment is presented in Appendix 2. While the treatment system used previously has been dismantled, EPA expects the new treatment system will be at least as effective as the old system. According to CITGO's variance application, the engineering for both the new and the old treatment systems are identical.

F. Summary of Proposed Rule

CITGO submitted a site-specific treatability variance petition to EPA on April 13, 1994, and submitted additional materials in response to EPA's request. The petition requested that EPA establish alternate LDR standards for F037 and F038 nonwastewaters generated by remediation of the Surge Pond, thereby allowing CITGO to continue the Surge Pond cleanup including land disposal of treated Surge Pond sludge.

As justification for the variance petition, CITGO stated that combustion is not an appropriate technology for Surge Pond sludge because:

(1) the tremendous quantity of wastes generated by this remediation exceeds the annual excess capacity available nationwide for F037 and F038 wastes;

(2) the metal content of this waste (4,084 ppm reported average) is higher than that of typical F037 and F038 wastes; and,

(3) the hazards of transporting the waste long distances for offsite incineration exceed the hazards of treating the waste onsite and disposing the residuals in the subtitle C landfill in Carlyss, seven miles from the site.[1]

CITGO also claimed that cement kiln combustion is inappropriate for this waste due to the low BTU content (less than 2,000 BTU/lb) of the waste, and stated that, ''When compared with other treatment options, the CITGO approach is clearly the safest for the environment and human health.'' After careful evaluation of CITGO's petition, EPA proposed to approve a treatability variance for the F037 and F038 nonwastewaters generated by the remediation of the Surge Pond based on a finding that application of the LDR treatment standards was not appropriate to sludge generated by remediation of the CITGO Surge Pond. 59 FR 44684 (August 30, 1994).

II. Basis for Treatability Variance

A. EPA's Interpretation of When a Treatment Standard Is ''Not Appropriate''

EPA's rules on treatability variances provide that EPA may approve a variance ''[w]here the treatment standard is expressed as a concentration in a waste . . . and a waste cannot be treated to the specified level, *or where the treatment technology is not appropriate to the waste. . .*'' 40 CFR 268.44(a) and (h) (emphasis added). Before discussing the application of these rules to CITGO's specific circumstance, there is a threshold issue regarding EPA's interpretation of the clause in the treatability variance rule authorizing variances ''where the treatment technology is not appropriate to the waste.''

EPA's longstanding and consistent interpretation is that a treatment standard based on the performance of BDAT can be inappropriate where it leads to environmentally counterproductive results, in particular, where it may impair environmental cleanups such as closure or site remediation—the situation EPA finds is presented by CITGO's application. Thus, in promulgating the National Contingency Plan under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), EPA stated:

> EPA's experience under CERCLA has been that treatment of large quantities of soil and debris containing relatively low levels of contamination using LDR ''best demonstrated available technology'' (BDAT) is often inappropriate. . . Experience with the CERCLA program has shown that many sites will have large quantities—in some cases, many thousands of cubic meters—of soils that are contaminated with relatively low concentrations of hazardous wastes. These soils often should be treated, but treatment with the types of technologies that would meet the standard of BDAT may yield little if any environmental benefit over other treatment based remedial options. . . .Based on EPA's experience to date and the virtually unanimous comments supporting this conclusion, EPA has determined that. . .current BDAT standards are generally inappropriate or unachievable for soil and debris from CERCLA response actions and RCRA corrective actions and closures.

55 FR 8666, 8760 (March 8, 1990). In linking this discussion to the language of the treatability variance rule, the Agency explained that: ''EPA's rules on treatability variances recognize that prohibited wastes be treated by appropriate technologies. The rules thus state that a petitioner may request a treatability variance 'where the treatment technology is not appropriate to the waste.' '' *Id.* at 8761. The Agency likewise stated specifically in the same notice that ''EPA does not interpret its site-specific variance procedures as invariably requiring applicants to demonstrate that they cannot meet applicable treatment levels or methods. The first sentence of § 268.44(h) makes it clear that an applicant may make one of *two* demonstrations to qualify for a variance: he may show either that he cannot meet a treatment standard, *or* that a treatment method (or the method underlying the standard [)] is inappropriate for his waste.'' Id. at 8762 n. 22.

EPA reiterated this interpretation most recently in the proposed Hazardous Waste Identification Rule for contaminated media. EPA there stated that ''[i]n other cases, the generic treatment standard will be inappropriate because use of an alternative treatment standard would result in a net environmental benefit.'' 61 FR 18780, 18811 (April 29, 1996). See also 53 FR at 31200 (August 17, 1988) (''On a site-specific basis, it may be possible to determine that BDAT treatment is inappropriate for a particular waste stream. For example, incineration of large volumes of contaminated soil under certain site-specific conditions may be found to be inappropriate treatment.'')

Some commenters on the proposed CITGO treatability variance argued that this language—that is, the ''not appropriate'' clause—only applies where the treatment standard for the waste is a designated method of treatment, and so does not apply where the treatment standards are expressed as numerical values. EPA has never limited its interpretation in this way, as just shown. Moreover, EPA's reading of its own rules is entirely reasonable.

First, the language of the variance provision does not preclude EPA's

[1] EPA notes that the Agency does not believe it necessary to reach CITGO's comparative risk argument regarding risk posed by sludge transport to off-site treatment. CITGO's other points are discussed in the August 30, 1994 proposal, in this preamble, and in the background documents for this rule.

reading, since the rule does not define the circumstances under which a treatment technology may be inappropriate. Nor would it be reasonable to read the clause as applying only to situations where the standard requires use of a designated method of treatment, since the rules already contain a separate provision authorizing petitions to use alternative treatment methods upon a showing of equivalent performance. 40 CFR 268.42(b). In light of this separate provision, the ''not appropriate'' clause in §§ 268.44(a) and (h) would have little scope unless interpreted to apply to all treatment standards.

Second, EPA's interpretation reflects a reasonable policy choice. In the remediation context, site decision makers are often faced with the choice of either capping or treating wastes in place (thereby avoiding application of LDRs) or excavating and triggering BDAT treatment standards. In such cases, the most cost effective choice is often to leave waste in place if the only alternative is BDAT treatment. 54 FR 15566, 15568 (October 10, 1989); 55 FR at 8760–62; 61 FR at 18812. This creates an incentive to favor remediation options that minimize LDR applicability (e.g., by leaving waste in place), a result obviously not contemplated by Congress in enacting the LDRs. 54 FR 41566–41569, October 10, 1989.

It is entirely rational to view as ''inappropriate'' imposition of a treatment technology that results in (or reasonably could result in) the environmentally detrimental result of no cleanup and no treatment. Indeed, there is a legitimate question whether a technology whose use results in foregoing other, substantial environmental benefits can be considered to be a ''best'' technology. *Portland Cement Association* v. *Ruckelshaus*, 486 F. 2d 375, 385–86 at n. 42 (D.C. Cir. 1973); *Essex Chemical Corp.* v. *Ruckelshaus*, 486 F. 2d 427, 439 (D.C. Cir. 1973). *See also Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 16 (D.C. Cir. 1992), cert. denied 113 S.Ct. 1961 (1993) (treatment sufficient to satisfy section 3004(m) need not be based on performance of best demonstrated available technology); and, the legislative history of section 3004(m), 130 Cong. Rec. S. 9178 (daily ed. July 25, 1984). (The intent of 3004(m) is to require utilization of available technology in lieu of continued land disposal without prior treatment, not that every waste receive repetitive or ultimate treatment.)

B. Application of EPA's Interpretation of When a Treatment Standard Is ''Not Appropriate'' to CITGO

After considering the comments on the August 30, 1994 proposal, EPA continues to find, as discussed in the proposal and in this preamble, that it is not appropriate within the meaning of §§ 268.44(a) and (h) to require treatment of Surge Pond sludge to levels based on the performance of combustion or solvent extraction technologies (the technologies on which the LDR treatment standards for F037 and F038 nonwastewaters are based) and that a treatability variance is, therefore, warranted. In CITGO's specific circumstance, EPA finds that requiring use of BDAT technologies would delay and possibly preclude removal of remaining sludge from the Surge Pond by encouraging CITGO to pursue remedial options that would minimize LDR applicability. Debate over these remedial alternatives would, at a minimum, further delay completion of Surge Pond remediation and could result in some or all of the remaining sludge being left in the Surge Pond with little or no treatment.

Today's treatability variance will assure protective remediation of the Surge Pond, that is, removal of Surge Pond sludge followed by substantial treatment (including oil recovery) and secure disposal of treated sludge in an off-site subtitle C facility. *Id.* at 44687. EPA views this result as environmentally preferable to other remedial options that CITGO could legally pursue (i.e., leaving the sludge in the Surge Pond), given that debate over these options would, at a minimum, significantly delay completion of Surge Pond remediation. *Id.* EPA believes the benefits of assured Surge Pond remediation, that is, removal of remaining sludge followed by substantial treatment (including oil recovery) and secure disposal in an off-site subtitle C facility (as proposed by CITGO and approved by the State of Louisiana Department of Environmental Protection), are superior to applying the treatment standard, because doing so would likely further delay sludge removal and possibly result in some or all of the sludge remaining in the Surge Pond untreated. Consequently, EPA is finding that requiring treatment based on the performance of BDAT is not appropriate to F037 and F038 nonwastewaters generated by CITGO's Surge Pond remediation because, in CITGO's specific circumstance, it would most likely result in net environmental detriment.

EPA is also finding that under the circumstances presented here, threats posed by land disposal of Surge Pond sludge—including current and potential threats posed by sludge remaining in the Surge Pond—are minimized (within the meaning of § 3004(m)) by the combination of removal of remaining sludge from the Surge Pond followed by substantial treatment (including oil recovery) and secure disposal in an off-site subtitle C facility.

In further support of these determinations, EPA notes:

(1) CITGO's remediation approach includes substantial treatment which will reduce the toxicity and mobility of all regulated constituents in the Surge Pond sludge and achieve treatment levels for benzene (the most hazardous constituent in the waste based on concentration, toxicity, and availability) and chromium, nickel, and cyanide. There is no question that sludge generated by Surge Pond remediation must be treated. The question is whether the Agency must apply BDAT treatment requirements (risking, as discussed above, delaying, if not precluding, assured Surge Pond remediation and potentially resulting if some or all sludge remaining in the Surge Pond untreated), or whether, in this specific case, alternative LDR treatment standards can be approved.

(2) The CITGO remediation strategy, including removal of all remaining sludge from the Surge Pond and the subsequent treatment, oil recovery and secure off-site disposal, was approved by the Louisiana Department of Environmental Quality as protective of human health and the environment. The Louisiana Department of Environmental Quality is authorized by EPA to administer the Federal RCRA program for closure of hazardous waste management units—the situation at CITGO. While EPA approval or concurrence is not typically required for individual actions in authorized states, EPA staff in Region 6 monitor the performance of authorized states, including Louisiana, and agree with the remedial strategy at CITGO.

(3) The remediation of the CITGO Surge Pond, including sludge treatment, was successfully on-going when it was interdicted by a new land disposal prohibition and treatment standard. When sludge from CITGO's Surge Pond became subject to the F037 and F038 LDR treatment standards, the remediation had to be stopped because the on-site treatment system could not meet the Treatment standards for all of the regulated constituents. EPA believes it is appropriate, in this case, to allow the state-approved remediation to

continue rather than to invest considerable resources in developing—and probably litigating—a new remedial strategy for the Surge Pond. EPA believes these resources are more properly directed at timely completion of Surge Pond remediation, including assured removal and substantial treatment of all remaining sludge.

(4) The variance applies only to sludge generated as a result of Surge Pond remediation. Newly-generated F037 and F038 wastes thus have to be treated in compliance with the existing treatment standards before they can be land disposed. As EPA has repeatedly discussed, treatability variances are often warranted for wastes generated in the context of remediation.

(5) Remediation of the CITGO Surge Pond involves tremendous volumes. CITGO estimates that 375,000 tons of sludge remain in the Surge Pond. While, as clarified below, EPA is not approving today's treatability variance based on insufficient treatment capacity, the economies of scale associated with this volume of waste supports the Agency's finding that, if BDAT treatment is required, CITGO will likely pursue legal remedial options that minimize LDR applicability (including leaving some or all of the sludge in the Surge Pond) and further delay remediation.

C. Effect of This Variance on Other Remedial Actions

The decision to approve a treatability variance and alternative LDR treatment standards for F037 and F038 nonwastewaters generated by remediation of the CITGO Surge Pond is specific to CITGO's circumstances and will not apply to any other sites or wastes. Furthermore, EPA does not intend or view this action as creating an incentive to avoid treatment of process wastes in remedial situations by the mechanism of resisting remedial options that trigger LDRs unless a treatability variance is approved. The facts at CITGO are unusual and may not arise again. Specifically, this is a situation where an on-going, successful, state-approved remediation was interdicted by a new LDR prohibition. The remedial strategy includes removal of all sludge from the Surge Pond followed by substantial treatment (including BDAT treatment of the most hazardous constituent and three other hazardous constituents), oil recovery, and secure disposal in an off-site Subtitle C facility. Approving the treatability variance assures completion of Surge Pond remediation including removal and substantial treatment of all remaining Surge Pond sludge. Denying the variance may lead to a prolonged debate on how to remediate the impoundment, and could result in some or all sludge remaining in the Surge Pond untreated.

III. Treatment Standards

A. Existing F037 and F038 Nonwastewater Treatment Standards

The listings for F037 and F038 were promulgated on November 2, 1990 (55 FR 46354) and amended May 13, 1991 (56 FR 21955). LDR treatment standards for F037 and F038 nonwastewaters were promulgated on August 18, 1992, 57 FR at 37271, 37274. The F037 and F038 nonwastewater treatment standards set total concentration limits for 14 hazardous organic constituents based on the performance of combustion or solvent extraction (determined to be BDAT), TCLP leachate concentration limits for nickel and chromium based on stabilization (generally the BDAT technology for metals), and, a total cyanide standard based on combustion.

B. Alternative F037 and F038 Nonwastewater Standards Approved for Use During Surge Pond Remediation at CITGO.

EPA is establishing alternative treatment standards for 14 of the 17 regulated F037 and F038 hazardous constituents. Alternative treatment standards were not established for di-n-butyl phthalate, bis (2-ethylhexyl) phthalate, and phenol, because these constituents were not detected in samples of pond waste collected for the variance petition. For benzene (the most hazardous constituent in this case) and chromium, nickel, and cyanide, the alternative treatment standards are identical to the existing treatment standards. For the other 10 regulated constituents, EPA calculated alternative standards based on data from samples of waste treated by the Aran unit [2] of CITGO's on-site sludge treatment system. In calculating these standards, EPA omitted data points for samples that did not meet the 10 mg/kg limit for benzene (CITGO's own measure of when the Aran unit was operating properly). The Agency then multiplied the mean treated concentration (from the 9 waste samples which met the benzene limit) by a variability factor calculated as per the equation established by *Final BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology,* Appendix D. Treatment system performance data submitted with CITGO's variance petition is summarized in Appendix 2 following this preamble. More information on the treatment system, sampling and analysis procedures, and the calculation of alternative standards is available in the Background Document for today's rule.

Since treated sludge from the CITGO Surge Pond remediation will remain hazardous waste, it may only be land disposed in a Subtitle C facility. The CITGO Alternative LDR Treatment Standards are summarized in the table below.

CITGO ALTERNATIVE LDR TREATMENT STANDARDS

Regulated hazardous constituent	CAS No.	Concentration in mg/kg unless noted as "mg/l TCLP"
Anthracene	120–12–7	20
Benzene	71–43–2	10*
Benz(a)anthracene	56–55–3	19
Benzo(a)pyrene	50–32–8	19
Chrysene	218–01–9	29
Ethylbenzene	100–41–4	39
Naphthalene	91–20–3	120
Phenanthrene	85–01–8	120
Pyrene	129–00–0	39
Toluene	108–88–3	33
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	150

[2] The Aran Unit is a sludge dewatering unit.

CITGO ALTERNATIVE LDR TREATMENT STANDARDS—Continued

Regulated hazardous constituent	CAS No.	Concentration in mg/kg unless noted as ''mg/l TCLP''
Chromium (total)	7440–47–3	0.86 mg/l TCLP*
Cyanides (total)	57–12–5	590*
Nickel	7440–02–0	5.0 mg/l TCLP*

* Standard is identical to UTS.

In order to ensure protection of human health and the environment, EPA is also imposing standards on the operation of CITGO's treatment system. First, the treatment system must be operated in accordance with applicable air emission standards specified by: (A) 40 CFR Part 61—National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart FF: National Emission Standard for Benzene Waste Operations, § 61.348 Standards: Treatment Processes; (B) CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (if applicable); and, (C) any additional requirements specified by the Louisiana Department of Environmental Quality (LDEQ).

Second, the treatability variance will be valid for 24 months only, commencing at the date the Surge Pond closure plan is approved by the Louisiana Department of Environmental Protection. CITGO may petition for additional time if unforeseen delays occur, provided they can demonstrate a good faith effort to complete the Surge Pond remediation, including sludge treatment, within the original specified time frames.

IV. Public Comments and EPA Responses

The issues raised by comments to the proposed rule which affected the final decision to approve this variance and the variance conditions and EPA's responses to these issues, are presented below. Please also refer to the Response to Comments and Background Documents for this rulemaking, available at the RCRA Docket, for presentation of additional issues and EPA responses.

Issue 1: One commenter stated that the proposed variance violates the requirement of § 268.44(a) that the ''petitioner must demonstrate that the waste cannot be treated to specified levels or by specified methods due to the chemical or physical properties of the waste.''

EPA Response: As discussed above, EPA has decided to approve this treatability variance because the treatment technologies upon which the F037 and F038 treatment standards are based are ''not appropriate to the waste.'' This condition is sufficient to make waste eligible for a treatability variance under 40 CFR 268.44(a) and (h).

Issue 2: One commenter doubted whether CITGO would seek to leave remaining sludge in the Surge Pond even if a treatability variance were denied and stated that, in any case, EPA should use its closure and corrective action authorities to require sludge removal and treatment to promulgated treatment standards.

EPA Response: EPA continues to believe that, if the costly BDAT treatment standard is imposed, CITGO will likely pursue legal remedial options that minimize LDR applicability due to their understandable desire to pursue a cost-effective strategy for Surge Pond remediation considering the enormous volume of waste involved. This is consistent with EPA's experience in implementing remedial programs such as CERCLA and RCRA Corrective Action and with information submitted by CITGO. Debate over this issue will undoubtably delay, if not preclude, removal and substantial treatment of the remaining sludge in the Surge Pond. For that reason, EPA has found that application of BDAT to CITGO's specific circumstance is inappropriate. 61 FR at 18812; 55 FR at 8760–8762.

In further support of this finding, EPA notes that the standards for closure of a surface impoundment under 40 CFR 265.111(b) and 265.228 do not necessarily require removal of all waste. Similarly, the requirements for corrective action do not necessarily require the removal and treatment of Surge Pond sludge if other remedial options were found to be consistent with Agency guidance and protective of human health and the environment. See RCRA sections 3004(u) and 3004(v); 40 CFR 264.101. CITGO retains the option under § 265.228 of not resuming the sludge removal operation and closing the impoundment with the waste in place, provided they can satisfy the requirements for post-closure care for a landfill under Subpart G (§ 265.111) and § 265.310. Public comments submitted by CITGO confirm that the company is considering this option seriously, and will likely pursue it if this variance is denied. The technical standards for closure in place require removal of free liquids, stabilization of wastes in order to support a final cover over the unit, and prevention of infiltration of liquids during the post-closure care period, as well as minimization of releases from the unit during the post-closure period to the extent necessary to protect human health and the environment. See generally 40 CFR 265.228 and 265.111(b).

Approval of an in-place closure or a given corrective action remedy depends on many site-specific factors. At this stage, it is not clear to EPA that leaving the sludge in the Surge Pond at CITGO is a technically feasible alternative, due in particular to the volume of standing water in the impoundment, plus the fact that the water table at the site is high and so may infiltrate into the unit. Nevertheless, EPA cannot now rule out the possibility that leaving some or all of the untreated sludge in the Surge Pond could be allowed through some combination of draining all liquids, using chemical treatment to stabilize sludge so that a cap could be supported, and building some type of below-ground barrier to prevent infiltration. CITGO has established their intention to pursue leaving the untreated sludge in the Surge Pond if their only other option for treatment of Surge Pond sludge is BDAT (i.e., if this variance is not approved). In support of this strategy, CITGO has submitted soil survey results which indicate the presence of a clay layer beneath the impoundment which could possibly serve as the foundation for such a barrier; the barrier would be completed by constructing vertical slurry walls to connect to this clay layer.

It is clear to EPA that a debate over remedial options that minimize LDR applicability to Surge Pond sludge would be contested and protracted and would, at the least, significantly delay Surge Pond remediation leaving 375,000

tons of sludge in place in an unlined impoundment. While, as set out at 40 CFR 265.112(d)(4), EPA (or, as in this case, the authorized State administering the program) retains the right to disapprove a submitted closure plan, review possible modifications, and ultimately to modify any submitted plan to be consistent with substantive standards for closure, a company could contest any such determination necessitating enforcement by the Agency with ultimate, protracted judicial resolution. EPA estimates that at CITGO this process would take years. During that time, there could be multimedia releases from the impoundment (although the corrective action rules and orders would mitigate the extent of any such releases), plus an uncertain prospect of ever forcing sludge removal. EPA believes that, in CITGO's specific circumstance, it is appropriate to avoid such a debate and, instead, direct resources at timely completion of Surge Pond remediation, given that the proposed remedial alternative is protective of human health and the environment and involves the environmentally desirable result of removal of all remaining sludge from the Surge Pond followed by substantial treatment (including oil recovery) and secure disposal in an off-site Subtitle C facility.

Issue 3.: One commenter stated that EPA's claim that incineration is not ''appropriate'' due to the tremendous volume of the waste directly contradicts previous EPA statements that treatability variances will not be approved on the basis of insufficient capacity.

EPA Response: EPA clarifies that today's variance is not being approved on the basis of insufficient treatment capacity.[3] The commenter correctly states that EPA said in the Federal Register notice establishing the treatability variance process (51 FR at 40606, November 7, 1986) that treatability variances may not be approved on the basis of capacity since other rules already provide for capacity variances. EPA is approving this variance on the basis that requiring treatment based on the performance of BDAT is, in CITGO's specific circumstance, inappropriate because it would likely result in a net environmental detriment (i.e, further delay of Surge Pond remediation). Although today's variance is not being approved based on insufficient treatment capacity, EPA notes that the cost of treating such a huge quantity of waste to BDAT standards could be prohibitive, thus compelling CITGO to seek cost-effective alternatives to BDAT treatment (i.e, combustion or solvent extraction). This observation supports EPA's finding that denying the variance will, at the least, further delay Surge Pond remediation.

Issue 4.: One commenter stated that, ''CITGO acknowledges its treatment system design was never intended to remove all 17 regulated hazardous constituents. By virtue of this admission alone, the proposed variance violates Section 3004(m) of RCRA. *Chemical Waste Management* v. *EPA , supra,* where the Court held that Section 3004(m) of RCRA requires that the threat posed by all hazardous constituents in a waste be minimized prior to land disposal.''

EPA Response: EPA's interpretation of ''minimize threats'' does not necessarily require BDAT treatment of all regulated constituents in every prohibited waste. As EPA stated in the Craftsman/Northwestern treatability variance, ''The language of § 3004(m) allows EPA latitude in determining what treatment minimizes waste toxicity and mobility. It does not mandate a technology-forcing approach. The legislative history likewise indicates that Congress did not necessarily envision technology-forcing § 3004(m) treatment standards. Rather, such standards were intended to force use of generally available effective types of treatment.'' (56 FR at 12355, March 25, 1991; see also 55 FR 6640–6643 (February 26, 1990); 61 FR at 18018 (April 29, 1996).) Moreover, the very opinion cited by the commenter makes clear that BDAT treatment is not compelled to meet a treatment standard (976 F. 2d at 15–16).

The CITGO treatment system was designed primarily to treat volatile organics (with a focus on benzene) and stabilize metals. The system achieves BDAT treatment levels for benzene and substantially treats the other volatile constituents (toluene, xylene, and ethylbenzene). While it might be possible to achieve additional reductions in concentrations of the other volatile constituents (toluene, xylene, and ethylbenzene) by engineering modifications to the air sparging tanks or increasing the treatment residence time, EPA believes that requiring additional treatment for these relatively low-risk constituents could seriously delay the completion of Surge Pond remediation and could (through this delay) result in greater emissions of more toxic constituents from the pond to the air.

Although the proposed treatment system was not designed for semivolatile organics (e.g. anthracene, chrysene), data from CITGO's variance petition shows that the treatment system does yield reductions in concentrations of these constituents. In addition, the semivolatile constituents which remain in the treated sludge will be much less mobile after the waste is solidified and will be further safeguarded by disposal in an off-site subtitle C landfill. The treatment system achieves treatment levels for the chromium, cyanides, and nickel.

It is EPA's judgment that requiring BDAT treatment of sludge generated by remediation of the CITGO Surge Pond would likely result in a net environmental detriment by, at least, substantially delaying Surge Pond remediation and potentially resulting in some or all of the sludge remaining in the Surge Pond untreated. It is the Agency's view that the combination of assured sludge removal, followed by treatment to substantially reduce toxicity and mobility of the regulated constituents plus oil recovery, and disposal of the treated sludge in an off-site subtitle C facility adequately minimizes threats posed by land disposal of the waste under these circumstances. Although this treatment strategy does not represent BDAT as promulgated for F037 and F038 nonwastewaters, it ''substantially diminish[es] the toxicity of the waste'' and ''substantially reduce[s] the likelihood of migration of hazardous constituents from the waste'' as required by Section 3004(m).

Issue 5.: One commenter stated that, ''Even the inadequate treatment contemplated by CITGO is not accompanied by binding requirements to ensure achievement of that level of efficiency. The lack of proposed treatment standards for most of the regulated constituents violates the minimize threat mandate of RCRA.''

EPA Response: EPA has reconsidered this issue and has decided to establish binding alternative treatment standards for all F037 and F038 regulated constituents that were detected in the Surge Pond sludge, as discussed above.

Issue 6.: One commenter suggested imposing a time limit on the treatability variance to ensure the work is done in a timely manner to protect human health and the environment. The commenter suggested an 18 month time limit from the date CITGO awarded the Surge Pond sludge treatment contract. Another commenter opposed the imposition of a time limit, stating that, ''it is not possible to predict with accuracy the time required for

[3] EPA thus disagrees with CITGO that the volume of waste alone is justification for approval of a variance.

completion of closure. It is thus not appropriate to establish an expiration date for the variance, nor is such contemplated under EPA's rules.''

EPA Response: EPA has decided to impose a time limit for this treatability variance, as discussed above. First, the Agency disagrees that it is without power to impose a time condition on the variance. There is nothing in the treatability variance rule, or in RCRA generally, which so restricts EPA's authority. Control of timing here is necessary to assure that the expected environmental benefits, which are the reason for approving the petition, actually accrue. Allowing CITGO unlimited time to complete the remediation would contradict EPA's assertion that it is approving this variance, in part, to ensure that Surge Pond remediation, including sludge removal and treatment, are completed as soon as possible.

EPA considered a time limit of 18 months from the date CITGO awards the sludge treatment contract as suggested by one commenter; however, discussions with CITGO lead the Agency to believe that this limit may not be practical. CITGO has stated in its public comments that prior to resuming sludge removal and treatment operation, it will have to prepare a bid package, review bids, reconstruct the treatment system, and obtain renewed approval for air emissions from the State. CITGO also indicated that one of their main concerns with the proposed time limit was the uncertainty posed by the time required to obtain final approval of the pond closure plan by the State, and that this concern would be lessened by linking the time limit to final approval of the closure plan. In conversations with the Agency, CITGO estimated that two years would be required to complete the pond remediation.

EPA has decided to establish a 24 month time limit for this treatability variance, calculated from the date the Surge Pond closure plan is approved by the Louisiana Department of Environmental Protection. The Agency believes it is reasonable to allow the effective period of this variance to begin with the closure plan approval. In addition, allowing 24 months for the completion of the remediation is consistent with EPA practice of allowing 18 to 24 months for the development and optimization of treatment capacity between the promulgation and the effective date of new LDR rules.

EPA recognizes that unforeseen circumstances, such as accidents, equipment malfunctions, or natural disasters, may prevent CITGO from completing this remediation within the established time limit. Under such extenuating circumstances, the Agency would not want the time limit to act as a disincentive to the completion of the sludge removal and treatment operation. Therefore, CITGO may petition for additional time if such unforeseen delays occur, provided they can demonstrate a good faith effort to complete the remediation. (The fact that the company has already removed and treated 500,000 tons of the sludge provides an objective track record to support the Agency's belief that the company will promptly act to complete its remediation efforts and clean close the impoundment.)

V. Analysis Under Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

This treatability variance does not create any new regulatory requirements. It merely establishes alternative treatment standards for specific wastes which replace standards already in effect. This rule is, therefore, not a ''significant'' regulatory action within the meaning of Executive Order 12866.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This final rule does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for specific wastes which replace standards already in effect. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

This treatability variance does not create any new regulatory requirements. It merely establishes alternative treatment standards for a specific waste which replace standards already in effect, and it applies to only to the CITGO Lake Charles, Louisiana site. Thus, this rule would not have a significant impact on a substantial number of small entities. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act: Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Finally, because this treatability variance only changes the treatment standards applicable to F037 and F038 nonwastewaters at the CITGO Lake Charles, Louisiana site, and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

VI. Submission to Congress and the General Accounting Office

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides, with limited exceptions, that no rule promulgated on or after March 29, 1996 may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation. However, this requirement does not apply to ''any rule of particular applicability. . . .''. 5 U.S.C. 804(3). The present rule is of particular applicability, applying only to a particular waste at one facility under particular (and, as noted, exceptional) circumstances. Consequently, the Congressional review provisions of SBREFA are not applicable and the rule can take effect without submittal to Congress. (This is not to say that this rule will be immediately effective. As explained above in this preamble, the treatability variance will be valid for 24 months, commencing at the date the Surge Pond closure plan is approved by the Louisiana Department of Environmental Protection.)

APPENDIX 1.—SUMMARY OF SURGE POND WASTE CHARACTERIZATION DATA UNTREATED F 037 AND F 038

	1993 Feasibility Study		February 1994		Variance Petition, March 1994	
	Average	Range	Average	Range	Average	Range
VOLATILE ORGANICS						
Benzene	66.9	3.9–190	2.06	1.4–3.3	26.8	6.1–54
Ethylbenzene	135.0	32–00	15.6	12.8–18.1	37.4	28.6–57
Toluene	182.3	ND–490	15.0	12.2–19.9	56.1	7.0–126
Xylene	438.0	14–930	75.7	59.5–85.1	154	67–371
SEMIVOLATILE ORGANICS						
Anthracene	33.0	7–65	< 4.5	< 4.5	23.4	4.2–45
Benzo(a)anthracene	44.9	7.1–160	ND	ND	17.0	6.3–28
Benzo(a)pyrene	34.4	6–120	4.3	3.85–4.6	9.4	ND–22
Bis(2-ethylhexyl) phthalate	ND	ND	ND	ND	ND	ND
Chrysene	73.9	16–220	2.5	ND–4.2	29.4	9.3–47
Di-n-butyl phthalate	ND	ND	ND	ND	ND	ND
Naphthalene	280.0	75–490	63.5	60.2–69.2	103	36–148
Phenanthrene	308.3	71–550	74.8	70.4–80.5	123	50–192
Phenol	32.0	ND–46	ND	ND	ND	ND
Pyrene	94.2	18–200	< 3.8	< 3.8	42.7	13–67
INORGANICS						
Cyanide	NA	NA	<1	<1	10.1	<1–34
Chromium	1085.0	268–2330	< 0.05 TC	< 0.05 TC	3.1 TC	<0.05—9.7
Nickel	75.0	34.8–229	< 0.05 TC	< 0.05 TC	0.12 TC	0.06–0.19

APPENDIX 2.— SUMMARY OF PERFORMANCE DATA, CITGO TREATMENT SYSTEM

[Success treated avg = Average excluding data points which failed to meet 10 mg/kg Benzene baseline limit]

All concentrations in mg/kg except *mg/L TCLP	Day 1		Day 2		Day 3		Day 4		4 Day Average		Alt Std	UTS
	Pond Avg	Treated Avg [1]	Pond Avg	Treated Avg [2]	Pond Avg	Treated Avg	Pond Avg	Treated Avg	Pond Avg	Success Treated Avg		
Benzene	47.5	14.0	28.55	10.9	6.9	5.9	24.4	4.6	26.8	5.7	10	10
Ethylbenzene	42.75	32.85	33.1	26.4	32.05	29.5	41.5	19.2	37.4	24.5	39	10
Toluene	117	58.6	40.3	35.2	10.8	25.4	67.6	24.5	56.1	25.6	33	10
Xylene	174.75	160.75	121.8	97.7	110	127	212	110	154.4	119	150	30
Anthracene	30.35	15.3	25.1	21.5	9.0	12.0	29.0	9.9	23.4	11.9	20	3.4
Benzo(a)anthracene	17.1	11.35	18.2	17.1	13.3	13.6	19.5	14.9	17.0	14.2	19	3.4
Benzo(a)pyrene	0	0	12.7	11.5	8.5	8.9	16.4	7.1	9.4	8.3	19	3.4
Chrysene	32.2	18.8	33.9	27.1	18.3	22.8	33.0	20.65	29.4	22.1	29	3.4
Naphthalene	131.5	85.5	85.3	87.6	87.25	88.05	108.6	51.8	103.2	70.9	120	5.6
Phenanthrene	168	96.4	119.3	113	74.8	92.95	130.25	82.9	123.1	90.1	120	5.6
Pyrene	57.5	26.8	44.8	39.0	21.35	25.9	47.2	28.0	42.7	28.3	39	8.2
Cyanide	11.1	1.45	4.1	1.0	17.25	1.0	8.0	0.73	10.1	1.0	590	590
Chromium*	8.0	0.05	0.9	0.05	0.08	0.06	3.4	0.02	3.1	0.04	0.86	0.86
Nickel*	0.13	0.05	0.14	0.05	0.1	0.05	0.12	0.00	0.12	0.04	5.0	5.0

[1] All samples failed to meet 10 mg/kg limit for Benzene on Day 1, were omitted from standard calculation.
[2] 3 of 4 samples failed to meet 10 mg/kg limit for Benzene on Day 2, were omitted from standard calculation.

APPENDIX 3.—CALCULATION OF TREATMENT STANDARDS

	Ethylbenzene	Toluene	Xylene	Anthracene	Benz(a) anthracene	Benzo(a) pyrene	Chrysene	Naphthalene	Phenanthrene	Pyrene
Sample 2–2	25.7	31	122	19.5	13.8	11.0	25.1	84.6	107	38.7
Sample 3–1	29.6	24.2	117	14.3	14.0	12.5	26.2	50.2	103	28.3

APPENDIX 3.—CALCULATION OF TREATMENT STANDARDS—Continued

	Ethylbenzene	Toluene	Xylene	Anthracene	Benz(a) anthracene	Benzo(a) pyrene	Chrysene	Naphthalene	Phenanthrene	Pyrene
Sample 3–2	30.7	28.1	147	11.7	11.9	6.4	20.2	49.9	87.8	24.8
Sample 3–3	31.1	26.1	129	11.0	14.3	8.3	22.5	51.9	92.7	25.3
Sample 3–4	26.5	23.2	114	11.0	14.3	8.3	22.5	55.1	88.3	25.3
Sample 4–1	20.0	27.0	115	10.5	13.4	9.5	21.6	96.7	85.6	31.7
Sample 4–2	18.0	21.0	103	8.69	18.4	4.2	18.9	75.7	79.6	26.3
Sample 4–3	20.0	24.0	115	9.16	14.1	4.0	18.4	86.0	71.6	24.6
Sample 4–4	19.0	26.0	108	11.4	13.7	10.6	23.7	83.5	95.0	29.4
Mean	24.5	25.6	119	11.9	14.2	8.31	22.1	70.4	90.1	28.3
Var Factor	1.59	1.28	1.25	1.65	1.28	2.30	1.30	1.75	1.30	1.37
Treatment Standard	39	33	150	20	19	19	29	120	120	39

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: October 22, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended by adding paragraph (p) to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(p) F037 and F038 wastes generated by the closure of the Surge Pond at the CITGO Petroleum Lake Charles Refinery site are excluded from the treatment standards under § 268.40 Table—Treatment Standards for Hazardous Wastes, and are subject to the following conditions:

(1) The hazardous constituents in the treated sludge (or in the TCLP extract of the treated sludge where indicated) must be at or below the concentration values indicated in the following table:

CITGO ALTERNATIVE LDR TREATMENT STANDARDS

Regulated Hazardous Constituent	CAS No.	Concentration in mg/kg unless noted as ''mg/l TCLP''
Anthracene	120–12–7	20
Benzene	71–43–2	10
Benz(a)anthracene	56–55–3	19
Benzo(a)pyrene	50–32–8	19
Chrysene	218–01–9	29
Ethylbenzene	100–41–4	39
Naphthalene	91–20–3	120
Phenanthrene	85–01–8	120
Pyrene	129–00–0	39
Toluene	108–88–3	33
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	150
Chromium (total)	7440–47–3	0.86 mg/l TCLP
Cyanides (total)	57–12–5	590
Nickel	7440–02–0	5.0 mg/l TCLP

Note: All standards for nonwastewaters are based on analysis of grab samples.

(2) The proposed sludge treatment system must be operated in accordance with applicable air emission standards specified by:

(i) 40 CFR Part 61—National Emission Standards for Hazardous Air Pollutants (NESHAP), Subpart FF: National Emission Standard for Benzene Waste Operations, § 61.348 Standards: Treatment Processes;

(ii) 40 CFR Parts 264 and 265—Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers (if applicable); and

(iii) Any additional requirements specified by the Louisiana Department of Environmental Quality (LDEQ).

(3) This treatability variance will be valid for a period of 24 months, commencing on the date the Surge Pond closure plan is approved by the State Director. CITGO may petition for additional time if unforeseen delays occur, provided they can demonstrate a good faith effort to complete the remediation.

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1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–028–00059–2)	26.00	Apr. 1, 1996
141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
1–299	(869–028–00074–6)	36.00	Apr. 1, 1996
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
200–219	(869–028–00078–9)	14.00	May 1, 1996
220–499	(869–028–00079–7)	13.00	May 1, 1996
500–699	(869–028–00080–1)	14.00	May 1, 1996
700–899	(869–028–00081–9)	13.00	May 1, 1996
900–1699	(869–028–00082–7)	21.00	May 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
*1900–1910 (§§ 1909 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
*200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
*18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
1–51	(869–028–00141–6)	50.00	July 1, 1996
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–028–00145–9)	47.00	July 1, 1996
72–85	(869–026–00148–1)	41.00	July 1, 1995
81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–026–00149–9)	40.00	July 1, 1995
87-135	(869–028–00149–1)	35.00	July 1, 1996
*136–149	(869–028–00150–5)	35.00	July 1, 1996
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–028–00152–1)	22.00	July 1, 1996
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–028–00155–6)	33.00	July 1, 1996
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–028–00157–2)	33.00	July 1, 1996
790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
*1–100	(869–028–00159–9)	12.00	July 1, 1996
*101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
*201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.